

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE
JUDICIARY, UNITED STATES SENATE

1. **Name:** Full name (include any former names used).

John Randell Adams, aka
John Randell Adams, Jr., aka
John R. Adams, nka
Judge John Adams
2. **Position:** State the position for which you have been nominated.

Answer:

U.S. District Court Judge, Northern District of Ohio
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.

Answer:

Summit County Court of Common Pleas
209 South High Street
Akron, OH 44308
Phone: 330-643-2230
4. **Birthplace:** State date and place of birth.

Answer:

Born September 22, 1955
Orrville, Ohio
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

Single
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Answer:

University of Akron School of Law (Evening program) – 1979-1983
Juris Doctorate 1983

Attended University of Toledo School of Law – September 1978
Withdrew due to mother's diagnosis with cancer

Bowling Green State University – 1974-1978
Bachelor of Science in Education received in June, 1978
(cum laude)

7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Answer:

Current employment: 1999 to present:
Judge, Court of Common Pleas
Summit County, Ohio (Akron)
209 South High Street
Akron, OH 44308

January, 1989 to March 1, 1999:
Associate and Partner, law firm of Kaufmann & Kaufmann
1200 First National Tower
Akron, OH 44308
330-762-7655

July 1, 1986 to February 3, 1989:
Assistant Summit County Prosecutor
Summit County Prosecutor's Office
53 E. Center Street
Akron, OH 44308
330-643-2800

January 6, 1984 to January, 1989:
Associate
Law firm of Germano, Rondy, Ciccolini Co., L.P.A.
P. O. Box 2104
2715 Manchester Road
Akron, OH 44309
330-753-1051

March 23, 1981 to January 6, 1984:

Law Clerk
Judge W. F. Spicer
Court of Common Pleas
209 South High Street
Akron, OH 44308
330-643-2330

1979 through March 1981:

Maintenance and laborer
Morton Salt Co.
151 South Industrial Avenue
Rittman, OH 44270
330-925-3015

Approximately Jan., Feb., Mar. 1979:

Temporary during strike at Frito-Lay, Inc.
Maintenance and laborer
Servomation, Inc.
Address: Unknown
Company believed to be no longer in existence

1978 Summer-Fall:

Employment Relations Clerk
Frito-Lay, Inc.
1626 Old Mansfield Road
Wooster, OH 44691

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

Answer:

None.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Answer:

Bowling Green State University – cum laude 1978
Volunteer Award, Traumatic Brain Injury Collaborative
October 2000

10. **Bar Associations:** List all bar associations or legal or judiciary-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Answer:

Member, Akron Bar Association – 1983 to present
Served on the following committees during that time:

- Common Pleas & Appellate Courts Committee
- Community Relations Committee
- Corporate Challenge Committee
- Fee Arbitration Committee
- Lawyer Referral & Information Service Committee
- New Lawyer Committee
- Probate Law Section – President 1991
- Professional Continuity Committee
- Program & Entertainment Committee
- Investigative Sub-Committee A
- Investigative Sub-Committee B

Member, Ohio State Bar Association

Member, Estate Planning, Trust and Probate Law Section of Bar Association
(Summit and Portage Counties Representative) 1994 to date
Currently, Member Emeritus of said Committee

Also, member of Elder Law Committee – 1998 to date

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Answer:

Admitted to Ohio Bar on November 1, 1983

Admitted to Practice of Law in U.S. District Court, Northern District of Ohio
August 13, 1986

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please

indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Answer:

Summit County Mental Health Association
 Women's Network
 NAACP, life member
 Traumatic Brain Injury Collaborative Group
 Summit County Criminal Justice Coordination Council
 Summit County Civil Justice Commission
 Presenter – Leadership Akron

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Answer:

None.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

Answer:

None.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

Answer:

My present state of health is excellent;
 I received a complete physical exam on May 17, 2002.

16. Citations: If you are or have been a judge, provide:

- (1) a short summary and citations for the ten (10) most significant opinions you have written;

1. State of Ohio v. Clarence A. Elkins
Summit County Court of Common Pleas Case No. CR 1998-06-1415
Ninth District Court of Appeals C.A. No. 19684

This was a death penalty case where the only eyewitness to the crime was a seven-year-old girl. The Court held that the child was competent at the time the hearsay statements were made based on her ability to recollect, communicate, understand the difference between a truth and a lie and the appreciation to be truthful. The Court further held that the hearsay statements were admissible under Ohio Evidence Rule 807 on the basis of independent proof of sexual acts and physical violence and the trustworthiness of those statements made to parents, physicians, hospital personnel, police officers, neighbors and friends. The Ninth District Court of Appeals affirmed this conviction.

In May of 2002, the Defendant filed a Motion to Vacate Conviction/Set Aside Sentence and Motion for a New Trial based on the following claims: (1) another individual committed the crime; (2) the child-victim recanted; (3) the police investigation was flawed; and (4) ineffective assistance of counsel. The State responded with a Motion to Dismiss, as the postconviction petition was untimely filed. The Court held that the Motion was untimely filed and Defendant did not satisfy the requirements of the Ohio Revised Code allowing the Court to consider an untimely motion. The Court further held that even if the Motion had been timely filed, the evidence submitted in support of the postconviction petition lacked sufficient credibility to justify the granting of Defendant's motions.

2. Sarah E. Ostergard, Executrix of the Estate of Walter Ostergard v. Thomas J. Kirby, M.D., et al.
Summit County Court of Common Pleas Case No. CV 1996-03-1156
Ninth District Court of Appeals C.A. No. 19899

This case involved medical malpractice. Plaintiff's decedent suffering from end stage emphysema, underwent a surgical procedure, developed a postoperative infection and died shortly thereafter. Plaintiff identified a trial expert. Defendants filed a motion to exclude her from testifying, as she was not competent to give expert testimony. The Court agreed and prohibited this expert from testifying as she did not devote at least one-half of her time to active clinical practice and she was not generally qualified to render opinions in this matter. This doctor did not admit patients, had no hospital privileges, never performed the type of surgery involved in this case, was not qualified to perform this type of

surgery and did not treat patients with end stage emphysema. The Ninth District Court of Appeals upheld this decision.

3. Citizens for Choice, et al. v. Summit County Council, et al.
Summit County Court of Common Pleas Case No. CV 1999-07-2672
Ninth District Court of Appeals C.A. No. 20117
Ohio Supreme Court Case No. 01-1046 – certiorari denied

This was an administrative appeal. The appellants were seeking declaratory judgment claiming that appellees improperly permitted withdrawal of signatures of freehold electors petitioning for erection of a new township. The Court determined what was meant as an “official action” and further determined when the “official action” took place in this case. The initial official action occurred when the Clerk of Council invoked the official action of the Summit County Auditor. This action rendered further additions and withdrawals of signatures invalid. Based on that date, the Court determined that there were sufficient signatures upon the petitions. The Court further held that it was constitutional for freehold electors to petition to create a new township and it did not violate equal protection clause to those electors who are no landowners. This decision was affirmed by the Ninth District Court of Appeals and certiorari was denied by the Ohio Supreme Court.

4. Wilbur Fath and Joshua W. McPeck, et al. v. Mutual Oil & Gas Co., et al.
Summit County Court of Common Pleas Case No. CV 1997-01-0960 & CV 1997-01-1973
Ninth District Court of Appeals C.A. No. 19851 & 19856

Plaintiffs were driving on unoccupied land in the country when their vehicle got stuck in the mud. They rocked the vehicle until it slid out of the mud and down a slope. The vehicle collided with a gas wellhead and exploded. The plaintiffs had been on the premises before and knew the area. They did not have permission of the landowner to be on the property. The Court held that the plaintiffs were licensees or trespassers. The plaintiffs failed to point to any willful, wanton or reckless misconduct of the landowner. Therefore, Defendants’ Motion for Summary Judgment was granted. This was upheld by the Ninth District Court of Appeals.

5. Rebecca Ralston v. John DiFiglio
Summit County Court of Common Pleas Case No. CV 1999-02-0475
Ninth District Court of Appeals C.A. No. 19875

This case involved plaintiff and defendant living together for about 14 years, during which time they had two children. The defendant later left the home. He was ordered through Domestic Relations Court to pay child support, which he faithfully did without arrearages. Plaintiff, thereafter, sued defendant for child

support during the time they were living together. The Court held that the defendant was a residential parent and that not only is support presumed but that there was actual evidence of support during that time. The Court granted the Defendant's Motion for Summary Judgment. The Ninth District Court of Appeals affirmed this decision.

6. Marie L. Gehri v. Leslie M. Yung
Summit County Court of Common Pleas Case No. CV 1999-09-3885

Plaintiff was involved in a motor vehicle accident. She discovered that she was pregnant at the time of the accident. She then miscarried approximately one month later. Plaintiff identified a chiropractor as an expert to testify as to the causation of the miscarriage. The Court's opinion held that the chiropractor was not qualified to testify in the area of obstetrics and gynecology and did not permit him to testify.

7. State of Ohio v. Joshua J. Zeffer
Summit County Court of Common Pleas Case No. CR 1999-08-1676
Ninth District Court of Appeals C.A. No. 19893 & 19963

The defendant pled guilty to involuntary manslaughter, multiple counts of aggravated vehicle assault, driving under the influence of alcohol or drugs and lanes of travel/weaving. Prior to sentencing, it came to the defense counsel's attention that the deceased victim was improperly intubated during her medical treatment after the accident. After sentencing, the defendant filed a Motion for Modification of Sentence, Motion to Withdraw the Guilty Plea and Motion for a New Trial. The basis for these motions was that the victim died from other causes than that of the defendant. The Court heard testimony from a registered nurse, not on the scene that evening, and the coroner who performed the autopsy in this case. The Court held that even if the intubation contributed to her death, that but for the defendant's action she would not have died. The opinion discussed causation and that the defendant is responsible for intervening acts. The defendant's motions were denied. This opinion was upheld by the Ninth District Court of Appeals.

8. Lawrence A. DeAngelis v. Carriage Services, Inc.
Summit County Court of Common Pleas Case No. CV 2000-08-3610
Ninth District Court of Appeals C.A. No. 20668 – dismissed

A member of the DeAngelis family passed away. The defendant's company removed the body from the basement of the home. The allegations were that the defendant was not careful in handling the body in front of family members. The plaintiffs alleged in their complaint negligent infliction of emotional distress and intentional infliction of emotional distress. The Court held in its Decision and Order on Motion for Summary Judgment that the plaintiffs failed to meet the elements for negligent and intentional infliction of emotional distress as no

serious emotional injury was established. Most of the plaintiffs did not undergo any type of psychological treatment or counseling whatsoever after the death of their family member. As to the other plaintiffs that did undergo psychological treatment and counseling, they were all seeking treatment prior to the death of their family member. Further, there was no evidence of aggravation of the psychological injury due to the conduct of the defendant.

9. Police & Firemen's Disability & Pension Fund v. City of Akron
Summit County Court of Common Pleas Case No. CV 1999-08-3198
Ninth District Court of Appeals C.A. No. 20996

The plaintiff, a multiple employer public retirement system for uniformed, full-time police and firemen, alleged that the defendant provided incorrect information to the plaintiff for purposes of calculating benefits. As a result overpayments were made to many firefighters. The plaintiff requested that the State Auditor conduct an audit to determine the accuracy of the compensatory time certified by the defendant. The audit revealed that overpayments were made to some 68 retired firefighters. The plaintiff's remaining causes of action were pursuant to O.R.C. §117.28 to recover illegally expended public money and breach of duty pursuant to O.R.C. Chapter 742. The Court held on defendant's Motion for Summary Judgment that the plaintiff had not met the statutory requirements of O.R.C. §117.28 as the Audit Report failed to make a finding for recovery. Further, the Court held that no cause of action was conferred under O.R.C. Chapter 742 for breach of duty. This decision was affirmed on appeal.

10. State of Ohio v. John Goff
Summit County Court of Common Pleas Case No. CR 2001-06-1390A
Ohio Supreme Court S.C. NO. 02-AP-046

The defendant requested that the trial judge be disqualified in his case, as the trial judge was the trier of fact in the co-defendant's case. The co-defendant was charged with two counts of Complicity to Commit Sexual Battery and one count of Endangering Children. The Court found the co-defendant guilty on one count of Complicity to Commit Sexual Battery and one count of Endangering Children. To find the co-defendant guilty of Complicity to Commit Sexual Battery, the Court made a determination beyond a reasonable doubt that a Sexual Battery occurred with the defendant (the principal offender). This is a required element of proving a Complicity to Commit Sexual Battery. The Court held in its decision that it was relying on the facts in that case. The theory of the co-defendant's case was not to establish that the defendant was not guilty. Further, the defendant did not waive a jury in his case. Therefore, the Court would not assess the credibility of the witnesses. The Court was not biased or prejudiced, but made its decision based solely on the evidence presented in the co-defendant's case. Therefore, the Court could be fair and impartial in the subsequent case. Subsequent to this decision,

the defendant filed a petition before the Ohio Supreme Court pursuant to O.R.C. §2701.031. The Ohio Supreme Court denied the affidavit of disqualification.

- (2) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

1. Gene Woodson v. Gregory Carlson, dba Aurora Interiors
Summit County Court of Common Pleas Case No. CV 1999-03-1088
Ninth District Court of Appeals C.A. No. 20296

Defendant missed the time in which to answer. The plaintiff filed motion for default judgment. The following day, the defendant moved for leave to plead and later filed an answer and counterclaim. The plaintiff then followed with a motion to strike. The Court granted default judgment. Thereafter, the defendant filed a Motion to Vacate the Default Judgment pursuant to Civ. R. 60(B) on the basis of excusable neglect. The defendant argued that he lost his secretary during the week that the answer was due and then within four weeks went to another law firm. The Court held that it was excusable neglect and granted the Motion to Vacate. The Ninth District Court of Appeals held that the defendant (Appellee) did not meet the tripartite test in order to prevail on a motion for Civ. R. 60(B) in that he did not make the requisite showing of excusable neglect. The trial court abused its discretion in granting the motion. However, the dissenting opinion held that what constitutes excusable neglect is a judgment call for the trial court. That the trial court did not abuse its discretion as it was not unreasonable, arbitrary or unconscionable.

2. Todd J. Schumacher, et al. v. Donald R. Tabor, et al.
Summit County Court of Common Pleas Case No. CV 1997-01-0112
Ninth District Court of Appeals C.A. No. 20027

The defendant executed two promissory notes without specifically indicating that he was signing in a representative capacity. The defendant promised to provide shares of stock to the plaintiff, which never occurred. The plaintiff filed suit. Thereafter, the defendant filed for bankruptcy and the case was stayed. The bankruptcy court held a hearing to determine if the defendant was eligible under Chapter 13. After hearing, the bankruptcy court determined that the defendant was ineligible and dismissed the bankruptcy petition. The bankruptcy court in making that determination found that the defendant was personally liable on the notes and determined that he was liable in the amount of \$233,494.31 as of August 4, 1998. The trial court granted summary judgment in favor of the plaintiffs on the basis of *res judicata* as the issue of personal liability and amount were already decided by the bankruptcy court. The Court further awarded \$264,128.75 to the plaintiffs. The defendant appealed. The Ninth District Court of Appeals affirmed in part and reversed in part. It held that the bankruptcy court

was a court of competent jurisdiction. The issue of the defendant's personal liability on the notes was actually and necessarily litigated by the bankruptcy court and therefore collateral estoppel prevented that issue from being relitigated. However, the issue of the amount of liability was not specifically litigated and determined by the bankruptcy court. The issue before the bankruptcy court was whether the defendant exceeded the limit to be a Chapter 13 debtor. Therefore, collateral estoppel did not apply to the amount of the liability.

3. Michelle Stefano v. Commodore Cove East Ltd., et al.
Summit County Court of Common Pleas Case No. CV 1999-08-3419
Ninth District Court of Appeals C.A. No. 20447

The plaintiff, a condominium owner, had damage to her premises after a pipe burst. The plaintiff contacted the condominium management to file a claim under their insurance policy. She also filed a claim with her own insurance company, since it was unclear which policy would govern. The condominiums were built and maintained by a limited liability company. Then in 1995, a condominium association was formed imposing bylaws and requiring insurance coverage on the property. When the plaintiff filed her claim in 1997 under the condominium's insurance policy, the insurance company was told by the limited liability company (not the association who was their insured) not to pursue the claim. After four years, the insurance company paid the plaintiff's claim. The remaining cause of action was for bad faith in not pursuing the claim. The Court granted summary judgment in favor of the condominium's insurance company on the claim of bad faith. However, the Ninth District Court of Appeals found that there was a genuine issue of material fact as to the bad faith claim. The insurance company relied on an entity that was not their insured in not pursuing the claim. Further, it took them four years to complete an investigation before paying the claim.

4. Alice Yakubik v. Angela Yakubik
Summit County Court of Common Pleas Case No. CV 1998-06-2383
Ninth District Court of Appeals C.A. No. 19587

Plaintiff served requests for admissions upon defendant, which were not timely answered. The plaintiff then filed a motion to deem them admitted. Some twenty-one days later, the defendant filed a notice that she had responded to the requests for admissions. The next day, the Court deemed the requests for admissions admitted. Thereafter, the plaintiff filed a motion for summary judgment and the defendant opposed and requested that she withdraw the admissions. The Court granted the motion for summary judgment and held that the requests be deemed admitted. The defendant then filed a Motion for Reconsideration and Motion for Relief from Judgment pursuant to Civ. R. 60(B). The Court granted the Motion for Relief from Judgment, vacating the order deeming the admissions admitted. The Ninth District Court of Appeals held that Civ. R. 60(B) may not be used as a substitute for a direct appeal. Once the trial

court's decision became final, it is the appellate court and not the trial court that should reconsider the decision in order to correct legal errors. There was a concurring opinion in judgment only, stating that the trial court should be able to correct its own errors when appropriate in the interest of judicial economy.

5. James A. Lamb, et al. v. Summit Mall, et al.
Summit County Court of Common Pleas Case No. CV 1998-08-3178
Ninth District Court of Appeals C.A. No. 20011

Plaintiff, an employee of a subcontractor, fell from a ladder at a mall and was injured. The defendants, the mall and general contractor, filed motions for summary judgment. The Court granted such motions as the work performed by the plaintiff was inherently dangerous and the defendants did not actively participate in the subcontractor's work. Therefore, the duty owed was less. The Ninth District Court of Appeals affirmed. However, the Court dismissed a fourth-party complaint by the general contractor against the subcontractor *nunc pro tunc*. The Ninth District Court of Appeals held that although the claim for indemnification is moot based on the motion for summary judgment, there was still an issue for costs and expenses. An order *nunc pro tunc* was not a proper way to dismiss that claim.

6. Instant Win, Ltd., et al. v. Summit County Sheriff, et al.
Summit County Court of Common Pleas Case No. CV 2001-05-2100
Ninth District Court of Appeals C.A. No. 20762

The plaintiffs filed a complaint seeking declaratory judgment, injunctive relief and a temporary restraining order. The Court denied the temporary restraining order. The defendants moved to dismiss the complaint. The Court granted the motion to dismiss based on the jurisdictional priority rule. The Ninth District Court of Appeals reversed saying that the jurisdictional priority rule applies in situations where the causes of action are the same or sufficiently similar in both cases. Further, the same parties must be involved and where the ruling of a subsequent court could affect or interfere with the issues before the other court. As the plaintiffs' motion to intervene in the Franklin County Case was not yet ruled on, therefore the same parties are not involved and the jurisdictional priority rule does not apply.

7. State of Ohio v. LaMonta R. McCoy
Summit County Court of Common Pleas Case No. CR 2001-01-0049
Ninth District Court of Appeals C.A. No. 20656
Ohio Supreme Court Case No. 02-0439

The Defendant was indicted on one count of Rape, Intimidation of a Crime Victim or Witness, and three counts of Sale to Underage Persons. The Defendant went to trial on these charges and the jury returned a verdict of not guilty of Rape

and Intimidation of a Crime Victim or Witness, but guilty of Attempted Rape and all three counts of Sale to Underage Persons. Thereafter, the Defendant filed a Petition for Post Conviction Relief raising ineffective assistance of counsel. The Defendant's lack of employment and schooling was put to the jury by his own counsel. Counsel further asked the Defendant during trial about his criminal record and about being in jail. The Defendant's criminal record was not likely to come in during the State's case-in-chief as the record included only traffic and misdemeanor offenses that were not crimes of dishonesty. Although the Defendant's criminal record only included misdemeanors, some of these crimes were against women, i.e. domestic violence and menacing. Further, the Defendant's counsel brought up the fact that a protection order was filed against the Defendant by his girlfriend. Defense counsel even corrected the Defendant when he was testifying about his prior convictions. The Court held that even if these actions by themselves did not fall into a category of ineffective assistance of counsel, in combination they rose to a level of deficient performance. As a result of such actions, the defendant was prejudiced and this information did weigh in the outcome. The Ninth District Court of Appeals held that the defendant did not overcome the presumption that the trial counsel's introduction of such evidence might be considered sound trial strategy and that he was prejudiced. This decision was appealed to the Ohio Supreme Court.

8. State of Ohio v. Kevin Lee Blanchard
Summit County Court of Common Pleas Case No. CR 1999-02-0281
Ninth District Court of Appeals C.A. No. 19943

Defendant was charged with Receiving Stolen Property after he informed a co-defendant on how to burglarize his girlfriend's parents' home. He further showed the co-defendant where the home was located. Once the home was burglarized and the co-defendant pawned the items, he split the proceeds with the defendant. A bench trial was held, the Court found the defendant guilty. The Court concluded that the definition of property included the cash proceeds thereof. The Ninth District Court of Appeals held that since the defendant did not have dominion or control over the property throughout, the State cannot establish that he received, retained or disposed of the property. Further, the Ninth District Court of Appeals felt that cash proceeds went beyond the legislature's intent. It also argued that if the proceeds are considered property then also could the items purchased with those proceeds, making the definition of property endless. The dissenting opinion held that property could include proceeds from the sale of stolen property.

9. State of Ohio v. Ronald Spatney
Summit County Court of Common Pleas Case No. CR 1999-04-0859
Ninth District Court of Appeals C.A. No. 20288

The defendant plead guilty to one count of Attempted Rape, a felony of the second degree. The Court sentenced him to the maximum sentence of eight years in prison. The defendant appealed to the Ninth District Court of Appeals arguing that the trial court failed to set forth findings on the record for imposing the maximum sentence. The case was remanded and the Court resentenced the defendant to eight years in prison after placing the appropriate findings on the record.

10. State of Ohio v. Debra Roberts
Summit County Court of Common Pleas Case No. CR 2000-05-1086(C)
Ninth District Court of Appeals C.A. No. 20266

The defendant plead guilty to one count of Robbery, a felony of the third degree. The Court sentenced her to the maximum sentence of five years in prison. The defendant appealed to the Ninth District Court of Appeals arguing that the trial court failed to set forth findings on the record for imposing the maximum sentence. The case was remanded and the Court resentenced the defendant.

11. State of Ohio v. Darius Allison
Summit County Court of Common Pleas Case No. CR 2000-03-0601
Ninth District Court of Appeals C.A. No. 20195

The defendant plead guilty to one count of Robbery (a felony of the second degree), firearm specification (one year term) and aggravated menacing (a misdemeanor of the first degree). The Court sentenced him to the maximum sentence of eight years in prison on the charge of Robbery and six months on the charge of aggravated menacing to be served concurrently. Further, the Court sentenced him to a term of one year for the firearm specification to be served consecutively. The defendant appealed to the Ninth District Court of Appeals arguing that the trial court failed to set forth findings on the record for imposing the maximum sentence. The case was remanded and the Court resentenced the defendant.

12. State of Ohio v. Gary A. Phares
Summit County Court of Common Pleas Case No. CR 1998-07-1780(A)
Ninth District Court of Appeals C.A. No. 19884

The defendant plead guilty to Burglary (a third degree felony) and Felonious Assault (a second degree felony). The Court sentenced him to four years in prison for burglary and six years in prison for felonious assault to be served consecutively. During the sentencing, the Court relied on statements by the victim and made reference to these statements during the sentencing. These victim impact statements were not disclosed to the defendant or his counsel prior to sentencing, as is usual protocol. The Ninth District Court of Appeals held that the Court failed to provide the defendant or his counsel with an opportunity to

comment on such statements before being sentenced since it was relied on for purposes of sentencing. The case was remanded and the Court resentenced the defendant after providing an opportunity for the defendant to respond to those statements.

13. State of Ohio v. Joseph D. Martin
Summit County Court of Common Pleas Case No. CR 2000-05-1086(D)
Ninth District Court of Appeals C.A. No. 20292

The defendant plead guilty to Aggravated Robbery, a felony of the first degree. The Court sentenced him to the maximum of ten years in prison. The defendant appealed his sentence to the Ninth District Court of Appeals, which affirmed in part and reversed in part. The appellate court held that the appropriate findings for the maximum sentence were made, that no prejudice occurred in not instructing on "bad time" and that the defendant was notified that he was subject to post-release control. However, the Court failed to inform the defendant of the ramifications of a violation of post-release control. The case was remanded and the Court advised the defendant of such ramifications.

14. State of Ohio v. Kreighammer Vonnjorjsson
Summit County Court of Common Pleas Case No. CR 2000-08-1918
Ninth District Court of Appeals C.A. No. 20368

The defendant plead guilty to one count of Corruption of a Minor, a felony of the fourth degree. The Court sentenced him to the maximum sentence of eighteen months in prison. The Court further found that the defendant was a sexual predator. The defendant appealed to the Ninth District Court of Appeals arguing that the trial court failed to set forth findings on the record for imposing the maximum sentence and failed to follow the State's recommendation that he be declared a sexually oriented offender. The Ninth District Court of Appeals affirmed in part and reversed in part finding that the Court failed to make findings for a maximum sentence. However, the Court was not bound to the recommendations made by the State regarding the defendant's sexual offender status. The case was remanded and the Court resentenced the defendant.

15. State of Ohio v. Kendrick L. Edwards
Summit County Court of Common Pleas Case No. CR 2001-04-0820
Ninth District Court of Appeals C.A. No. 20840

The defendant plead guilty to Possession of Cocaine and was sentenced to two years community control with the condition that he enter and successfully complete the Summit County Community Based Correctional Facility (CBCF). Thereafter, he violated his community control by failing to complete the CBCF program and was found guilty by the Court. The Court sentenced him to eleven months in prison, but denied credit for time served in CBCF. The defendant

appealed the denial of credit for time served in CBCF. The Ninth District Court of Appeals reversed and remanded to determine if the time in CBCF was confinement entitling him to jail time credit.

16. State of Ohio v. Kenneth D. Linscott
Summit County Court of Common Pleas Case No. CR 1999-07-1466
Ninth District Court of Appeals C.A. No. 19947 & 20021

The defendant plead guilty to two counts of gross sexual imposition (felonies of the third degree). The Court sentenced him to five years community control with the condition that he enter and successfully complete a sex offender program. Within nine days of entering that program, the defendant was terminated from the program and violated on community control. The defendant plead not guilty to his community control violation. A hearing was held and the Court found the defendant guilty. The Court sentenced the defendant to the maximum five years on each count to be served consecutively. The Court further found that he was a sexual predator. The Ninth District Court of Appeals affirmed in part and reversed in part. The appellate court affirmed the acceptance of the guilty plea, order of the competency evaluation, enforcement of the order to interview the defendant, effective assistance of counsel, imposing of a prison term that was not the minimum and permitting hearsay during a probation violation hearing. The appellate court reversed as the trial court failed to make the requisite findings for the maximum and consecutive sentences and failed to provide adequate notice prior to holding the sexual offender hearing. The case was remanded and the Court resentenced the defendant and held the sexual offender hearing after adequate notice.

17. The Maple Street Living Trust v. Frank J. Spada, et al.
Summit County Court of Common Pleas Case No. CR 2000-07-3029
Ninth District Court of Appeals C.A. Nos. 20736, 20737

This case was brought as a Foreclosure action on certain real property in Summit County, Ohio, known as lots 279 and 280. It is undisputed that the Plaintiff has a proper mortgage on the property at issue. The Plaintiff filed a Motion for Leave to file a Motion for Summary Judgment and a Motion for Summary Judgment to foreclose on both lots. One of the defendants, Fifth Third Bank, has a subsequent mortgage on lot 280 only. That defendant filed a Motion to Strike Portions of the Summary Judgment that applied to lot 280, or in the alternative, a Motion to Reconsider and Deny the Plaintiff Leave to Request Summary Judgment on lot 280. The Court denied the Defendant's Motions and granted the Plaintiff's Motion for Summary Judgment, allowing both lots to be sold to satisfy the outstanding mortgage. The Ninth District held that upon denying Defendant's Motion to Strike, the Court was required to give Defendants the opportunity to respond to Plaintiff's Motion before ruling. The Court's ruling was reversed and

remanded with instruction to allow Defendant time to respond to Plaintiff's Motion.

18. State of Ohio v. Marsha L. Weese
Summit County Court of Common Pleas Case No. CR 2000-10-2422
Ninth District Court of Appeals C.A. No. 20769

The Defendant was charged with Driving While Under the Influence of Alcohol or Drugs, Aggravated Possession of Drugs, and Possession of Drugs. The charges were filed after an incident where the Defendant was found in her car, stopped at a green light, slumped over the steering wheel. When a police officer approached the Defendant's vehicle, she depressed the accelerator, causing the vehicle to lurch forward. After the Defendant stopped the vehicle, the officer noticed that she appeared confused. Defendant was given a field sobriety test, which had conflicting results. The Defendant repeated that she was tired. The officer allowed the Defendant to drive to a parking lot in order to call someone for a ride home. When she was unable to obtain a ride, the officer decided to drive her to a hotel. Before entering the vehicle, the officer requested that the Defendant empty her pockets for safety reasons. The contents of her pockets contained five round blue pills. When unable to obtain a satisfactory answer as to the substance of the pills, the Defendant was placed under arrest. The officer then searched the Defendant's purse and discovered cocaine. The Court held a suppression hearing regarding the pills uncovered and the cocaine subsequently found in the Defendant's purse after her arrest. The Motion to Suppress was denied. The Ninth District Court of Appeals held that the officer's request to have the Defendant empty her pockets exceeded the scope of a pat-down search under Terry v. Ohio. As such, the cocaine found in the Defendant's purse was fruit of the poisonous tree and was therefore also inadmissible.

19. State of Ohio v. Richard D. Bronner
Summit County Court of Common Pleas Case No. CR 2001-03-0568
Ninth District Court of Appeals C.A. No. 20753

Defendant was charged with Rape of a Child under the age of thirteen and Sexual Battery. The charges were based on allegations, made by the maternal grandfather who also had legal custody of the child, that the Defendant had the four-year-old child perform sex upon him. The Defendant went to trial on these charges. During opening statements, Defendant's counsel implied that the grandfather was bias against the Defendant because of his race. After cross-examination of the grandfather, the State requested a sidebar and approached the Court about introducing evidence in rebuttal of other reasons why the grandfather disliked the Defendant other than race. The State argued that defense counsel inaccurately left the impression that the grandfather disliked the Defendant because of his race and it should be permitted to rebut the impression by introducing evidence of other reasons, such as a prior arrest, a conviction and

other illegal acts. The Court concluded, over defense objection, that the State was permitted to introduce such evidence in order to rebut the impression left by the defense and to fully explain why the grandfather may not like the Defendant. The jury returned a verdict of guilty on both the Rape and Sexual Battery. Thereafter, the Defendant filed an appeal to the Ninth District Court of Appeals. The Ninth District, in a split decision, held in a majority, that the defense did not “open the door” to the character testimony presented by the State, that the evidence presented by the State did not properly rebut the inference made by the defense, and that the testimony presented by the State was improper character evidence. The majority further held that because the only evidence presented was the word of a young child, the Defendant was prejudiced by the introduction of this character evidence. Justice Carr gave a strong dissent to the majority decision. Justice Carr stated that the evidence was properly admitted and that the State presented more evidence of Defendant’s guilt than just the child’s testimony. The other evidence presented was that the child demonstrated behaviors such as wetting the bed, uncharacteristically aggressive and clingy behavior and sexually provocative actions toward others. Justice Carr further stated that the character evidence presented by the State was meaningless when compared to the Defendant’s taped statement about the incident placing the blame on the four-year-old victim for sexually attacking him. Note: The State of Ohio has appealed this decision to the Ohio Supreme Court.

20. Barry Smith, et al. v. Coldwell Banker Hunter Realty, et al.
Summit County Court of Common Pleas Case No. CV 2000-07-3255
Ninth District Court of Appeals C.A. No. 20908

Plaintiff alleged fraud and intentional misrepresentation against Defendant, Coldwell Banker Hunter Realty, and its agent in recommending a builder to the Plaintiff. Due to the Court being in trial on a criminal matter, this action was referred to another Common Pleas Judge, who heard the case as a courtesy to the Court. After the Plaintiffs rested their case in chief, the presiding Judge, upon the court’s own motion, dismissed the case without prejudice pursuant to Civ. R. 41(B), for the Plaintiff failing to offer evidence of all issues. It appears from the record that the basis of the trial court’s ruling was that the Plaintiff failed to offer evidence of diminution in value to establish damages. The Plaintiff then filed a Motion for a New Trial. This Court granted the Plaintiff’s Motion, determining that the Plaintiff was not required to prove diminution of value in their case in chief. The Ninth District ruled that diminution in value of real property is a limiting factor on an award for damages to real property, keeping the restoration costs from being grossly disproportionate to the diminution in value. Because the damage to the property in this case totaled almost one-half the purchase price of the home, the Ninth District found that the case was properly dismissed for failure to present evidence of diminution in value in the Plaintiff’s case in chief.

21. Ralph Howell v. Summit County, et al.
Summit County Court of Common Pleas Case No. CV 2000-03-1269
Ninth District Court of Appeals C.A. No. 20958

In this action, the Plaintiff claimed that his employer and various individuals unlawfully discriminated against him based on race and sex. The Plaintiff based his allegations from a complaint that he made in 1992, that his pay was not comparable to other employees of a different race or sex. After this initial conversation, no action was taken against the Plaintiff for years. Several years after his complaint, the Plaintiff was reprimanded and his position changed, although his pay remained the same. Plaintiff claims that his change in position was in retaliation to his 1992 complaint. Plaintiff's alleged damages include the fact that he is no longer able to receive phone calls at work or receive mail delivered to his prior office, that in his new position, his pay has the potential of being reduced and that he has suffered physical and emotional harm. The Defendant filed a Motion for Summary Judgment, which this Court granted. The Court found that the Plaintiff failed to establish a prima facie case of retaliatory discrimination because the Plaintiff was replaced by a person of similar race and sex, and that the Defendant established a legitimate, non-discriminatory business reason for the Plaintiff's transfer. The Ninth District Court of Appeals held that, although the Plaintiff may have failed to establish a prima facie case of retaliatory discrimination because he was not replaced by a non-protected person, that he may be able to do so by showing that a comparable non-protected person was treated better. Because this issue was not addressed in the Defendant's Motion, the Ninth District determined that Defendant had failed to meet its burden and reversed the Court's ruling.

22. State of Ohio v. Wayne A. Wood
Summit County Court of Common Pleas Case No. CV 1999-07-1423
Ninth District Court of Appeals C.A. No. 21044

The defendant plead guilty to one amended count of Burglary, a felony of the third degree. The Court sentenced him to the maximum sentence of five years in prison. The defendant appealed to the Ninth District Court of Appeals arguing among other claims, that the trial court failed to set forth findings on the record for imposing the maximum sentence. The case was remanded to the Court for resentencing. A hearing is scheduled for December 10, 2002, to resentence the defendant.

23. MGM Landscape Contractors, Inc. v. Robert W. Berry, et al.
Summit County Court of Common Pleas Case No. CR 1996-12-5174
Ninth District Court of Appeals C.A. No. 20979

The plaintiff originally filed an affidavit for a mechanic's lien for defendants' failure to pay for landscaping services. The plaintiff later amended the complaint to include a demand for money judgment for labor and material and a request that the mechanic's lien be found to be valid so that it could foreclose on the property. The defendants filed multiple counterclaims. The claims remaining at trial were for a violation of the Consumer Sales Practices Act, breach of contract, slander of title and failure to complete the work in a workmanlike manner. The defendants were involved in various other legal actions regarding other contractors on this same property, the plaintiff's law firm, defendants' own attorney, the plaintiff's insurance company, the insurance company's claims adjuster and the wife of MGM Landscape Contractors, Inc.'s president. Further, the defendants filed suit on these same claims against the plaintiff in other courts. The trial court admitted this evidence of defendants' litigiousness on the basis that it demonstrated the defendants' motive and/or plan to not pay for services. The Ninth District Court of Appeals held that such evidence was not relevant and the probative value was not substantially outweighed by the danger of unfair prejudice pursuant to Ohio Evidence Rules 403(A) and 404(B). The case was remanded to the trial court for further proceedings consistent with the appellate decision.

- (3) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

1. Cleveland Neighborhood Builders, Inc., et al. v. The Council of the City of Akron, et al.
Summit County Court of Common Pleas Case No. CV 1999-06-2242
Ninth District Court of Appeals C.A. No. 20273

This is an administrative appeal arising from Akron City Council's denial of a conditional use permit to Cleveland Neighborhood Builders, Inc. The Court affirms the decision of Akron City Council. The Court could not find that the city council's decision was capricious and unreasonable and based solely on objections by the community. The city code sets forth factors to be considered in determining whether to grant a permit. All of these factors must be met to grant such a permit. This Court found by a preponderance of the evidence that one of the criteria was not met and therefore the decision was reasonable. Cleveland Neighborhood Builders, Inc. further argued that the city's code was unconstitutional which the Court rejected. This decision was ultimately affirmed by the Ninth District Court of Appeals.

2. State of Ohio v. Delbert L. Dewitt
Summit County Court of Common Pleas Case No. CR 1999-03-0475

The defendant being charged with rape, kidnapping and attempted murder, pled guilty to felonious assault and attempted rape. He was sentenced to seven years

on each count consecutively in prison. The defendant subsequently filed petition for post-conviction relief on the basis of ineffective assistance of counsel and violation of due process. The Court's opinion held that the defendant's plea was voluntarily made. The defendant did not raise this issue until after he was sentenced. Further, the trial court had a lengthy discussion with the defendant at the time of his plea, determining whether the defendant knew the nature of the charges and the maximum sentence that he could face. Further, the Court held that counsel was effective. The defendant failed to show that counsel performance was deficient and but for the counsel's errors, he would not have pled guilty. The defendant was provided several attorneys throughout the course of his case. He also failed to appear at sentencing.

3. State of Ohio v. Timothy P. Carmichael, Sr.
Summit County Court of Common Pleas Case No. CR 1999-04-0778(A)

The defendant was previously charged and pled guilty to theft of equipment. He was later charged with theft in office of ghost payroll accounts. An administrative hearing by his employer resulted in a pay reduction and transfer to another position based on the theft conviction. The Court held that double jeopardy did not attach either to the first theft case or the administrative hearing. Further, the Court held that collateral estoppel did not apply. The Defendant's Motion to Dismiss was denied.

4. State of Ohio v. Neil E. Webster
Summit County Court of Common Pleas Case No. CR 1999-09-1897
Ninth District Court of Appeals C.A. No. 20184 – dismissed

The defendant pled guilty to one count of Corruption of a Minor (felony of the fourth degree) and was sentenced to eleven months in prison. He then filed a Motion to Terminate Post Release Control as it violates the Fifth, Eighth and Fourteenth Amendments of the United States Constitution. There was an issue of standing if the defendant had not yet served his sentence and been placed on post release control as of the time of his motion. The Court's opinion further held that it is not the discretion of the trial court to determine who will be on post release control. By statute, it is the authority of the parole board. Therefore, the defendant's motion was denied. An appeal was filed on July 24, 2000, to the Ninth District Court of Appeals and was later dismissed.

5. State of Ohio v. Clyde DeWayne Rice
Summit County Court of Common Pleas Case No. CR 1986-06-0757

The defendant pled guilty to Aggravated Robbery with a firearm specification in 1986. Subsequently, he pled guilty to aggravated trafficking charges. The defendant stated that he was not aware at the time he pled guilty to the robbery (considered a violence specification) he had become a candidate for enhancement

of any future sentence. The defendant filed for Writ of Error Coram Nobis. The Court held that writs of coram nobis are not part of the law in Ohio and considered it a petition for post conviction relief. The Court further held that the defendant's motion was untimely filed and denied the relief.

6. State of Ohio v. David L. Piper
Summit County Court of Common Pleas Case No. CR 1998-07-1833

The defendant was charged with multiple counts of Sexual Penetration (first degree felony), Gross Sexual Imposition (third degree felony) and Endangering Children (first degree misdemeanor). The defendant filed a motion to dismiss on the basis of State v. Hughes (1999), 86 Ohio St.3d 424, claiming that the misdemeanor charges were not brought within the speedy trial time. The Court noted an exception to the tolling of time when it is based on the defendant's own motion and any reasonable continuance.. After time was calculated, there was only one period in dispute. That period involved setting a trial date. Defendant's counsel requested a date in April and the Court directed that it be set in March, as that was the court's next available trial date. It was determined that such continuance was reasonable. Therefore, the motion to dismiss was denied.

7. State of Ohio v. Jeffery T. Cole
Summit County Court of Common Pleas Case No. CR 1993-10-2448(B)
Ninth District Court of Appeals C.A. No. 20065

The defendant was found guilty by a jury of Involuntary Manslaughter with the underlying offense of assault with a firearm specification, which offenses occurred on or about October 16, 1993. The defendant was sentenced to consecutive sentences of four to ten years in prison on the Involuntary Manslaughter and three years mandatory on the firearm specification. Defendant requested judicial release pursuant to Ohio Revised Code §2929.20. However, the offenses, trial and sentencing were prior to Senate Bill 2, which became effective on July 1, 1996. Therefore, the Defendant is not eligible for judicial release, as Senate Bill 2 does not apply retroactively. The defendant was also not eligible for shock/supershock probation due to using a firearm in committing the offense. The Court held that the defendant's equal protection and due process under the Fourteenth Amendment was not violated because Senate Bill 2 is not retroactively applied. The defendant argued that he did not receive the benefits of post Senate Bill 2. However, the defendant does receive the benefits of pre Senate Bill 2, such as good time. Therefore, the defendant's Motion for Judicial Release was denied. The Ninth District Court of Appeals affirmed that decision.

8. State of Ohio v. James B. Barnett
Summit County Court of Common Pleas Case No. CR 2000-10-2441

The defendant filed a motion to suppress on multiple issues. The Court found that the stop was lawful as the officers were stopping the defendant on a traffic violation. The Court found the statements made by the defendant were admissible on the basis that the Miranda warnings were given and that the defendant made the statements on his own without questioning by the officers. A gun was discovered on the seat of the vehicle. The Court held that when the officer went to retrieve marijuana in plain view he observed the gun in the open pouch in plain view. The Court further noted that the gun would have inevitably been discovered during the inventory for tow of the vehicle. The defendant argues that his refusal to take a breathalyzer test is inadmissible due to the officer's failure to advise him of the consequences of the refusal. The Court held that failure to advise of the consequences of the refusal can affect the administrative license suspension, but it does not affect the admissibility of the refusal.

9. State of Ohio v. Richard Louis Curley
Summit County Court of Common Pleas Case No. CR 2000-09-2145
Ninth District Court of Appeals C.A. No. 20474

The defendant was a suspect in a string of burglaries in the area. He was arrested on other pending charges and taken to the police station. He confessed on two occasions to the burglaries and also took the officers to the homes that he burglarized. On a Motion to Suppress, the defendant claimed that he was not given his Miranda warnings and that his statements were not voluntarily made. The evidence supported that the Miranda warning was given to the defendant on both occasions. The defendant argued that he requested to call his family so they could contact an attorney and the police refused. He also argued that they threatened not to release his girlfriend unless he confessed and promised him drug treatment with no prison time. However, the evidence supports that the defendant knew of his girlfriend's release and still continued to talk with police. Although the police promised to get him help for his drug problem, it was not in exchange for his confession. At no time did they promise that he would not go to prison. The Court denied the defendant's motion to suppress. The defendant filed a notice of appeal on February 23, 2001, to the Ninth District Court of Appeals. The Court dismissed the case as untimely filed.

10. State of Ohio v. Russell L. Dossie
Summit County Court of Common Pleas Case No. CR 1999-07-1376
Ninth District Court of Appeals C.A. No. 19935

This case arose out of an incident on July 4th where the victim got out of his vehicle and approached the defendant's car in anger. The defendant then shot the victim, killing him. The defendant left the scene and disposed of the weapon. The State charged the defendant with murder pursuant to Ohio Revised Code §2903.02(B). The defendant filed a Motion to Dismiss this indictment on the basis that this statute was unconstitutional. The Court held that although there is

no mens rea requirement in that murder statute, the underlying first or second-degree felony does have a mens rea attached. The defendant argued violation of equal protection, as the new felony-murder statute and involuntary manslaughter are identical in proof but impose different penalties. The Court held that the crimes were not identical as the new felony-murder statute limits the underlying offense to that of a first or second-degree felony of violence. The Court further held that this statute does not violate the defendant's rights against cruel and unusual punishment, as the penalty is not greatly disproportionate to the offense. This case was appealed to the Ninth District Court of Appeals and affirmed. However, the jury found the defendant not guilty of the murder charge.

11. State of Ohio v. Michael L. Roper
Summit County Court of Common Pleas Case No. CR 2000-04-0945

The defendant was brought to trial on four separate occasions on the same charges of Aggravated Robbery and Aggravated Murder. The first three jury trials resulted in a mistrial as the jurors were unable to reach a unanimous verdict. The jury reached a verdict of guilty on all counts in the fourth trial. At the start of the fourth trial, individual voir dire was conducted of the prospective jurors specifically to pretrial publicity and bias. During the second day of deliberations, jurors expressed concerns of unwanted media attention and concerns for their safety. After the Court addressed some of the issues, the jurors resumed deliberations and eventually reached a verdict. After the verdict, each juror individually, on the record, indicated a desire not to have their names and addresses disclosed to the media. The jurors were approached upon leaving the jury room and some later were contacted by media following the filing of the verdict forms. Their answers were the same. They refused to answer questions or be interviewed. The Court did not permit the release of the jurors' names and addresses upon requests from local media. After a hearing regarding the matter, the Court denied the request to release the names finding an overriding interest compels limitation upon the right of access and that this was the least restrictive means possible. No appeal was taken on this decision.

12. State of Ohio v. John T. Goff & Narda K. Goff
Summit County Court of Common Pleas Case No. CR 2001-06-1390

The defendants made statements to employees from the Department of Job and Family Services, the magistrate and an assistant prosecutor during a shelter care hearing and informal meeting in regard to the placement of the child. Further, questions were asked of the defendants regarding paternity as is required for the shelter care hearing. The defendants made further statements during a meeting with the agency when introducing the new social worker on the case. The defendants also made statements to the police prior to them being considered suspects in the case. During none of these statements were *Miranda* rights given

to the defendants. The Court held these interviews with the defendants were not custodial in nature and therefore did not trigger the need for *Miranda* warnings.

13. State of Ohio v. Marsha Weese
Summit County Court of Common Pleas Case No. CR 2000-10-2422
Ninth District Court of Appeals C.A. No. 20769

An officer made a proper *Terry* stop upon observing suspicious operation of a motor vehicle. He made all accommodations possible to assist the driver in obtaining alternate transportation, which she was unable to do. The officer then offered to transport the defendant to locale where she could stay. In placing her in the cruiser, he performed a safety search and discovered drugs. Defendant's Motion to Suppress the contents of the search was denied. This decision was reversed on appeal. See Answer to Question 16(2), No. 18.

14. State of Ohio v. Clarence A. Elkins
Summit County Court of Common Pleas Case No. CR 1998-06-1415
Ninth District Court of Appeals C.A. No. 19684

This was a death penalty case where the only eyewitness to the crime was a seven-year-old girl. The Court held that the child was competent at the time the hearsay statements were made based on her ability to recollect, communicate, understand the difference between a truth and a lie and the appreciation to be truthful. The Court further held that the hearsay statements were admissible under Ohio Evidence Rule 807 on the basis of independent proof of sexual acts and physical violence and the trustworthiness of those statements made to parents, physicians, hospital personnel, police officers, neighbors and friends. The Ninth District Court of Appeals affirmed this conviction.

In May of 2002, the Defendant filed a Motion to Vacate Conviction/Set Aside Sentence and Motion for a New Trial based on the following claims: (1) another individual committed the crime; (2) the child-victim recanted; (3) the police investigation was flawed; and (4) ineffective assistance of counsel. The State responded with a Motion to Dismiss, as the postconviction petition was untimely filed. The Court held that the Motion was untimely filed and Defendant did not satisfy the requirements of the Ohio Revised Code allowing the Court to consider an untimely motion. The Court further held that even if the Motion had been timely filed, the evidence submitted in support of the postconviction petition lacked sufficient credibility to justify the granting of Defendant's motions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

17. **Public Office, Political Activities and Affiliations:**

- (1) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

Ran unsuccessfully for 5th Ward City Council, Akron, Ohio, in 1985.

- (2) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Answer:

Volunteered in the judicial campaigns of Judge Donna J. Carr, Ninth District Court of Appeals, and in the judicial and prosecutor campaigns of Maureen O'Connor.

18. **Legal Career:**

- (a) Describe chronologically your law practice and experience after graduation from law school including:

- (1) whether you served as a clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

Answer:

Clerk to Judge W. F. Spicer
Court of Common Pleas, Probate Division, Summit County, Ohio
209 South High Street, Akron, OH 44308
During and immediately following law school –
March 23, 1981 to January 6, 1984

- (2) whether you practiced alone, and if so, the addresses and dates;

No

- (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Answer:

Associate with the law firm of Germano, Rondy and Ciccolini Co.,
L.P.A.

P. O. Box 2104
2715 Manchester Road
Akron, OH 44309
330-753-1051

From January, 1984 to January, 1989.

Associate and partner in the law firm of Kaufmann & Kaufmann
1200 First National Tower

Akron, OH 44308
330-762-7655

From January, 1989 to March, 1999.

(b)

- (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

Answer:

From 1984 through 1986, during my years as an associate in the law firm of Germano, Rondy & Ciccolini Co., my practice consisted primarily of the general practice of law. During that time, I handled a wide range of matters, including criminal, civil, domestic and probate related matters.

From 1986 through 1989, during my tenure in the Summit County Prosecutor's Office as an Assistant Prosecutor, I handled civil matters representing various office holders of Summit County, as well as subdivisions thereof. While serving as Assistant Prosecutor, I also maintained a part-time association with the law firm of Germano, Rondy & Ciccolini Co., almost exclusively probate and estate planning related matters.

Upon joining the law firm of Kaufmann & Kaufmann in 1989, my practice became almost exclusively limited to the area of estate planning, probate, trust law, specializing in such areas as guardianships, adoptions, medicaid planning, and planning for those with disabilities. That specialty continued throughout my tenure as both an Associate and Partner with the law firm of Kaufmann & Kaufmann and Philip S. Kaufmann.

Answer:

Families, senior citizens, disadvantaged and handicapped.

(c)

- (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

Answer:

During the early part of my career, during the general practice of law, my appearances in court were frequent, including civil, criminal and probate. Those appearances were almost exclusively in state courts, both municipal and common pleas.

During my tenure as an Assistant Summit County Prosecutor, the frequency of court appearances lessened; however, during that time frame my practice also extended to the Federal District Court.

- (2) Indicate the percentage of these appearances in:

- (a) federal courts;
- (b) state courts of record;
- (c) other courts.

Answer:

I would roughly estimate that during my tenure in the Summit County Prosecutor's Office that approximately 80 percent of the cases were at the state court level, with approximately 20 percent at the federal court level. As a private practitioner from 1983 to 1986 I would estimate 50% of my cases were in probate courts and 50% were in other state courts of record. From 1989 to 1999, 95% of my cases were in probate courts and the balance were in other state courts of record.

- (3) Indicate the percentage of these appearances in:

- (a) civil proceedings;
- (b) criminal proceedings.

Answer:

As noted above, during the early part of my career, I would estimate that my practice was divided into 60 percent civil and 40 percent criminal. Following 1986, during my tenure in the Summit County Prosecutor's Office, thereafter my practice consisted almost exclusively of civil related matters.

- (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

Answer:

There were no cases which I tried to verdict or judgment.

- (5) Indicate the percentage of these trials that were decided by a jury.

Answer:

Almost all of the cases were non-jury matters.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

- (1) the citations, if the cases were reported, and the docket number and date if unreported;
- (2) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
- (3) the party or parties whom you represented; and
- (4) describe in detail the nature of your participation in the litigation and the final disposition of the case.

Answer:

1. State, ex rel. Hartlaub v. Morgan (1989), 57 Ohio App. 3d 113.

Date of representation: 1989

Trial Court Judge Edward Mahoney; Appellate Court Judges William Baird and Mary Cacioppo.

No co-counsel

Principal counsel for each of the other parties:

Douglas Godschall, Hanna, Campbell & Powell, P. O. Box 5521; 3737 Embassy Parkway, Suite 100; Akron, Ohio 44333; Phone: 330-670-7300; and Richard M. Boyce, 1617 W. State Street; Alliance, Ohio 44601; Phone: 330-829-0151.

Represented the Summit County Executive in response to a complaint seeking to compel the executive to make payment of monies to a member of the Summit County Soldiers' Relief Commission.

The Court of Appeals ruled in the Summit County Executive's favor.

2. Joseph A. Hartlaub, plaintiff v. County of Summit, et al., In the U.S. District Court, Northern District of Ohio, Eastern Division, Civil Action No. C87-2766A.

Date of representation: 1998, 1999.

U.S. District Court, Northern District of Ohio, Eastern Division
Judge Ann Aldrich.

No co-counsel

Principal counsel for each of the other parties:

Douglas Godschall, Hanna, Campbell & Powell; P. O. Box 5521; 3737 Embassy Parkway, Suite 100; Akron, Ohio 44333; Phone: 330-670-7300; and Richard M. Boyce; 1617 W. State Street; Alliance, Ohio 44601; Phone: 330-829-0151.

In this matter I served as counsel for various officers of Summit County, including the Summit County Executive and others defending constitutional claims under 42 U.S.C. Section 1983 as well as claims for defamation and breach of contract.

Upon our motion for summary judgment, the District Court ruled in favor of Summit County and dismissed the plaintiff's action.

3. American Legion Post 209 v. Summit Cty. Bd. of Elections (1988), 57 Ohio App.3d 95.

Date of representation: 1988

Trial Court Judge Mary F. Spicer; Appellate Court Judges Daniel Quillin, William Baird, Mary Cacioppo.

No co-counsel

Principal counsel for each of the other parties:
Christopher T. Cherpas, P. O. Box 9400; Akron, Ohio 44305;
Phone: 330-798-4600.

Matter involved a liquor permit holder appealing the outcome of an action seeking to void a local election.

In this matter, as Assistant County Prosecutor, I represented the Summit County Board of Elections.

The Trial Court ruled in favor of the plaintiff, American Legion Post 209, on appeal, I was successful in having the decision of the Trial Court reversed and ruling in favor of the Summit County Board of Elections.

Note: a Motion to certify the record of the Supreme Court of Ohio was overruled.

4. Lawrence v. Edwin Shaw Hosp. (1988), 57 Ohio App. 3d 93.

Date of representation: 1988

Trial Court Judge James Murphy; Appellate Court Judges William Baird, Edward Mahoney and Joyce George.

No co-counsel.

Principal counsel for each of the other parties:
James L. Wagner, 529 White Pond Drive; Akron, OH 44320;
Phone: 330-864-3100

Plaintiff was a management level employee who was discharged by his employer. The plaintiff brought suit alleging that an employee handbook created an express employment agreement

Plaintiff's case was dismissed on summary judgment at the trial level. The Court determined that the plaintiff was an at-will employee and that the employee handbook did not constitute a valid employment contract. The dismissal was upheld on appeal.

Note: A Motion to certify the record of the Supreme Court of Ohio was overruled.

5. Marv Santillo Weaver v. William Fenwick, et al. (1995), Summit County Case Nos. CV-95-06-2142; CV-96-04-1529.

Date of representation: 1995

Court of Common Pleas, Summit County, Ohio
Judge James Williams/James Winter, visiting Judge by assignment.

Name, address and phone number of co-counsel:
Andrea L. Norris; 4367 State Road; Akron, Ohio 44319; Phone: 330-644-0706.

Principal counsel for each of the other parties:
A. Edward Bonetti, Jr.; 441 Wolf Ledges Parkway, Suite 302; Akron, Ohio 44311; Phone: 330-376-9691.

Represented plaintiff, a widow, in her rights to retain certain real estate as against an individual who fraudulently obtained title to said real estate from her.

In re the Guardianship of Stephen Giovrekos. Summit County Probate Court Case No. G95-05-028.

Date of representation: 1995

Court of Common Pleas, Summit County, Ohio, Judge W. F. Spicer, Magistrate Larry Poulos.

No co-counsel

Principal counsel for each of the other parties:
Gus O'Neil; 1221 West Market Street; Akron, Ohio 44313; Phone: 330-836-8159.

This was an action to obtain guardianship over an elderly Greek gentleman and prevent him from being removed from this country by a non-blood relative. Successful in our efforts to establish a guardianship for Stephen Giovrekos and to prevent him from being removed from the country.

7. In re the Guardianship of Sophie Pasko. Summit County Probate Court Case No. G96-04-021

Date of representation: 1996.

Court of Common Pleas, Summit County, Ohio, Judge W. F. Spicer.

No co-counsel

Principal counsel for each of the other parties:
James B. Chapman; 159 South Main Street; Akron, Ohio 44308;
Phone: 330-535-5900

This was an action to obtain guardianship over an elderly woman who was allegedly being exploited by one of her children. Settlement.

8. John Curia vs. Jeanette Curia, Summit County Probate Court Case No. 1997 CV-12-003.

Date of representation: 1998

Court of Common Pleas, Summit County, Ohio, Judge W. F. Spicer, Magistrate Ann Snyder.

Co-counsel:
Thomas A. Teodosio; 156 South Main Street, Suite 907; Akron, Ohio 44308;
Phone: 330-535-9111.

Principal counsel for each of the other parties:
Howard L. Calhoun; 707 Key Bldg; 159 South Main Street, Akron, Ohio 44308;
Phone: 330-253-1111.

Represented John Curia, an elderly gentleman, in seeking to have his Will validated prior to his death. Settlement.

9. Mary Lou Pizzutte v. Nicholas J. Battaglia, et al.,
Portage County Case No. 1990 CV-38713

Date of representation: 1990.

Court of Common Pleas, Portage County, Ohio, Judge Thomas Carnes.

Co-counsel:
Laurie J. Pittman, now Portage County Municipal Court Judge Laurie J. Pittman;
203 W. Main Street; P. O. Box 958, Ravenna, Ohio 44266; Phone: 330-678-0947.

Principal counsel for each of the other parties:
Leon A. Weiss; 113 St. Clair Bldg., Suite 300; Cleveland, Ohio 44114;
Phone: 216-687-1311.

This was an action brought to contest a Will. The case was settled.

10. In re Adoption of Megan Elizabeth "Doe." Summit County Probate Court Case No. A89-04-02.

Date of representation: 1990-1991

Court of Common Pleas, Summit County, Ohio, Judge W. F. Spicer; Magistrate Maureen O'Connor.

No co-counsel.

Principal counsel for each of the other parties:
Patrick M. Maniscalco; Suite 200, 1414 South Green Road; South Euclid, Ohio 44121.

Successfully represented adoptive parents in an attempt by birth mother to invalidate an adoption.

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

Answer:

No

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

Answer:

No

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

Answer:

I will resolve any potential conflict of interest by fully disclosing same to litigants, parties or other officials appearing before me. I will follow the Code of Judicial Conduct in such matters.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

See attached Financial Disclosure Report

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

See attached Net Worth Statement

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Answer:

Yes

- (1) If so, did it recommend your nomination?

Answer:

Yes, I believe so.

- (2) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

Answer:

I was interviewed by a committee formed by Senators DeWine and Voinovich to select nominees to the Federal Bench. Following the committee's

recommendation, I was personally interviewed by Senators DeWine and Voinovich. I was interviewed by the White House Counsel's Office and the Federal Bureau of Investigation.

- (3) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

Answer:

No.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	1	000.00	Notes payable to banks-secured		
U.S. Government securities-add schedule	94	001.94	Notes payable to banks-unsecured	17	327.48
Listed securities-add schedule			Notes payable to relatives		
Unlisted securities-add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid income and interest		
Doubtful			Real estate mortgages payable-add schedule	327	707.89
Real estate owned-add schedule	415	000.00	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property	57	950.00			
Cash value-life insurance	25	81.83			
Other assets itemize:					
Retirement Account (see att.)	64	273.26			
			Total liabilities	346	635.37
			Net Worth	288	171.66
Total Assets	634	807.03	Total liabilities and net worth	634	807.03
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)	No	
On leases or contracts	1	600.00	Are you defendant in any suits or legal actions?	No	
Legal Claims			Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax					
Other special debt					

FIRSTMERIT BANK / AKRON
 HOLDINGS LIST PRICED AS OF:12/04/02
 11930-00 JOHN R. ADAMS AGT. U/A CASH BASIS 12/05/02 13:31
 ADMIN PG. 1

SECURITY DESCRIPTION	S	SHARES/PV	MARKET VALUE	FEDERAL COST	%MKT	P	ANNUAL INC/	CURR
							UNREAL G/L	YIELD
U.S. GOV. MONEY MARKET FUNDS								
=====								
FEDERATED AUTO GVT CASH-1S #82						1	6	
469.8200		469.82	469.82	0.5			0	1.2
DOMESTIC COMMON STOCKS								
=====								
FIRSTMERIT CORPORATION						1	800	
800.0000		17,888.00	2.00	20.7			17,886	4.5
DOMESTIC EQUITY MUTUAL FUNDS								
=====								
FEDERATED CAP APPRECIATION-A #674						1	58	
967.8830		19,386.70	31,918.96	22.5			-12,532	0.2
FIDELITY ADV EQUITY GROWTH CL I #86						1	0	
179.0360		6,549.40	7,873.68	7.7			-1,224	0.0
FIDELITY ADV EQUITY PORT INC I #82						1	86	
319.0040		6,780.12	6,847.91	7.8			112	1.7
FIDELITY CONTRAFUND INC #22						1	64	
290.6420		11,279.82	0.89	13.1			11,279	0.6
FRANKLIN SM-MID CAP GR FD CL A #198						1	19	
229.5370		5,254.10	4,652.69	6.1			601	0.4
JANUS GROWTH AND INCOME FUND #40						1	188	
695.5860		16,902.74	1,233.19	19.6			15,670	1.1
INTL EQUITY MUTUAL FUNDS								
=====								
TEMPLETON FOREIGN FUND CL A #104						1	30	
198.3290		1,695.71	1,860.22	2.0			-165	1.7

INVESTMENTS		86,288.41	54,659.36	100.0			1,251	1.4
PRINCIPAL CASH		-1,135.25	-1,135.25				31,627	
TOTAL		85,153.16	53,524.11					

INCOME CASH		1,135.25						
INV. INCOME CASH		0.00						
VERY LIQUID BALANCE			469.82					

FIRSTMERIT BANK / AKRON
 11930-01 JOHN R. ADAMS IRA ROLLOVER SEP
 HOLDINGS LIST
 PRICED AS OF: 12/04/02
 CASH BASIS
 ADMIN PG 1
 12/05/02 13:31

SECURITY DESCRIPTION	S	SHARES/PV	MARKET VALUE	FEDERAL COST	MMKT	P	ANNUAL INC/	CURR
							UNREAL G/L	YIELD
U.S. GOV. MONEY MARKET FUNDS								
=====								
FEDERATED GOVERNMENT OBLIGATIONS FD					1		330	
23,563.7300		23,563.73	23,563.73	36.7			0	1.4
DOMESTIC COMMON STOCKS								
=====								
FIRSTMERIT CORPORATION					1		236	
236.0000		5,276.96	1.00	8.2			5,276	4.5
DOMESTIC EQUITY MUTUAL FUNDS								
=====								
FIDELITY ADV EQUITY GROWTH CL I #86					1		0	
273.2680		10,149.17	12,717.57	15.6			-3,568	0.0
FIDELITY ADV EQUITY PORT INC I #80					1		93	
345.2840		7,316.57	7,731.06	11.4			-414	1.3
FIDELITY BLUE CHIP GROWTH #111					1		20	
103.3450		11,016.01	12,658.23	17.1			-4,639	0.0
FRANKLIN SM-MID CAP GR FD CL A #198					1		10	
123.3090		2,822.54	2,526.13	4.4			296	0.4
WHITE OAK GROWTH PORTFOLIO #986					1		0	
111.7500		2,822.81	7,000.00	4.4			-4,177	0.0
INTL EQUITY MUTUAL FUNDS								
=====								
TEMPLETON FOREIGN FUND CL A #104					1		23	
152.6860		1,305.47	1,517.41	2.0			-212	1.7

INVESTMENTS		64,273.26	71,712.12	100.0			712	1.1
							-7,439	
PRINCIPAL CASH		0.00	0.00					
TOTAL		64,273.26	71,712.12					
INCOME CASH		0.00						
INV. INCOME CASH		0.00						
VERY LIQUID BALANCE			23,563.73					

Listed Securities (Cont'd)

FirstMerit Common Stock:

155 Shares @ 22.36	\$3,465.00
--------------------	------------

McDonald Investment Account holding:

Fidelity Contrafund and Fidelity Adv. Growth Op. CLB:	\$4,250.53
---	------------

Real Estate Owned

Real property -- residential

Appraised Value: \$415,000.00

Real property in Smithville, Ohio, subject to Life Estate to family member.

Value unknown

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).

Robert Alan Junell
2. **Position:** State the position for which you have been nominated.

United States District Judge, Western District of Texas
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.

301 West Beauregard Avenue, Suite 200
San Angelo, Texas 76903
915/481-2550
4. **Birthplace:** State date and place of birth.

El Paso, Texas
January 27, 1947
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

Beverly Ann Singley Junell
Housewife
One dependent child
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Questionnaire For Nominees Before The Committee
On The Judiciary, United States Senate
Robert A. Junell

- A. Texas Tech University School of Law; September 1974 to December 1976. JD with Honors, December 1976;
 - B. University of Arkansas; approximately 1972 to August 1974 (attended while in the U.S. Army overseas) M.S. 1974;
 - C. Texas Tech University; September 1967 to May 1970. B.S. 1969;
 - D. Angelo State University; Summer of 1968; and,
 - E. New Mexico Military Institute; September 1965 to May 1967; A.A. 1967.
7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations; companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.
- A. Jackson Walker LLP; January 1999 to present; 225 W. Beauregard, San Angelo, Texas; Of Counsel;
 - B. Small, Craig and Werkenthin LLC; August 1996 to December 1998; 225 W. Beauregard, San Angelo, Texas; of Counsel;
 - C. Smith, Carter, Rose, Finley and Griffis; August 1994 to August 1996; 222 W. Harris; Partner;
 - D. Griffis, Motl and Junell; October 1990 to August 1994; 16 E. Beauregard, San Angelo, Texas; Associate and Partner;
 - E. Webb, Stokes and Sparks; April 1979 to October 1990; 314 W. Harris, San Angelo, Texas; Associate and partner;
 - F. Scott, Hulse, Marshall and Feuille; April 1977 to April 1979; El Paso, Texas; Associate;
 - G. George Gilkerson, Attorney at Law; May 1975 to February 1977; Lubbock, Texas; law clerk;
 - H. 1st National Bank of Lubbock, Texas; May 1974 to August 1974; Lubbock, Texas; clerk;
 - I. United States Army (#8) June 1970 to December 1973;
 - J. Texas Tech University; January 1970 to May 1970; Graduate Assistant football coach;
 - K. Some welding company in Lubbock, Texas; summer 1969; welder;
 - L. Texas Tank Car Works; summer 1968; 600 N. Baze, San Angelo, Texas; hand;

- M. Continental Airlines; Lubbock Regional Airport, Lubbock, Texas; summer 1967; baggage clerk;
- N. KILE Radio Station; summer 1966; Galveston, Texas; handyman;
- O. Rim Rock City; summer 1965; Lubbock, Texas; handyman
- P. Advisory Director, First National Bank of Mertzon; July 1995 to present; 106 South Broadway, Mertzon, Texas;
- R. Board of Directors, San Angelo Chamber of Commerce, (Ex Officio); 1988 through the present;
- S. Trustee, West Texas Boys Ranch Foundation;
- T. Trustee, Schreiner College;
- W. Member of the Advisory Board for ASU Management.
- X. Past Board Directors; Shannon Health System; November 1995 to September 1999;
- Y. Past Board Director, Tom Green County AgriFood Education Council;
- Z. Past Board Director, Shannon Health System;
- AA. Past Board Director, Shannon SportsCare Advisory Board;
- BB. Past Board Director, La Esperanza Clinic;
- CC. Past Board of Directors, Research and Oversight Council on Workers' Compensation;
- DD. Past Executive Council Member, Concho Valley Council of Governments;
- EE. Past Board Director, Adult Day Care of San Angelo, Inc.;
- FF. Past Member, Junior League Advisory Board;
- GG. Past Board Director, San Angelo Council on Alcohol and Drug Abuse;
- HH. Past Board Director, Texas Tech School of Law Association;
- II. Past Board Director, Volunteers in Public Schools;
- JJ. Past Member, State MHMR Volunteer Services Council;
- KK. Past Member, San Angelo Adopt-A-School Advisory Council;
- LL. Past Board Director, Texas Tech Ex-Student Association;
- MM. Past Board of Directors, Advisory Board of the Southwest Institute for Addictive Diseases, Texas Tech University;
- NN. Past Chairman, State Employee Charitable Campaign, San Angelo District
- OO. Past Board of Directors, United Way of the Concho Valley, (Ex Officio);
- PP. Past Board of Directors, San Angelo AIDS Foundation;
- QQ. Past Board of Directors, San Angelo Child Support Volunteer Service Board; and,
- RR. Member San Angelo Area Foundation.

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

Commissioned a Second Lieutenant in the U.S. Army in December 1969 upon graduation from Texas Tech University; served on active duty from June 1970 to December 1973; Honorably Discharged as a Captain on August 31, 1980. Serial number was 460-68-7596.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Recipient of the "Elmer Martin" award, Mitchell County, Texas, for service to the County, 2002;
 Named one of the "Top Ten Legislators, Best in the House" by Gallery Watch, 2001;
 Named one of Texas Class Room Teachers Association "Legislative Stars," 2001;
 Recipient of award from Childrens Hospitals of Texas (Chariot); 2001;
 Declared "Honorary Member" of Friends of San Angelo State Park; 2001;
 Recipient of "Frank J. Tejeda" award, Texas State Teachers Association; 2000;
 Named "Man of the Year In Agriculture", Texas County Agricultural Agents Association, 2000;
 Named "Director of the Year", West Texas Boys Ranch, 2000;
 Recognized by the Texas Rural Electric Coalition for Selfless Support of Rural Texas & The Rural Electric Cooperatives That Serve the Country 2000;
 Recognized for Supporting the County Attorney Compensation Act of the 76th Legislature by the Texas District & County Attorneys Association, 2000;
 TIPRO Hats Off! Award, by the Texas Independent Petroleum & Royalty Owners Association, 2000;
 Received the "TCJL Top 11 Award" by the Texas Civil Justice League for Outstanding Contributions on Behalf of Tort Reform, 1999;
 Selected as an "Outstanding Texas Leader" by the John Ben Shepperd Leadership Forum, 1999;
 Named Regional "Minority Small Business Advocate of the Year" by the Small Business Administration, 1999;
 "STAR" Award for Outstanding Service, Angelo State University Student Body,

Questionnaire For Nominees Before The Committee
 On The Judiciary, United States Senate
 Robert A. Junell

1999;
 Named "Legislator of the Year," Texas Council of Child Welfare Boards, 1999;
 Recognized by the Texas Association of Community Schools for Outstanding Efforts
 On Behalf of Public School Education, 1998;
 Awarded the "Gold Apple Award" from the Texas Association of Mid-Size Schools,
 1998;
 Named "Honorary Alumnus" by the Angelo State University Ex-Student's
 Association, 1998;
 "Appreciation Award" for Service to Retired Teachers by the Texas Retired Teachers
 Association, 1998;
 Named "Advocate Of The Year," by the Texas Association for the Gifted and
 Talented, 1998;
 Recognized by the Texas Association of Mexican American Chambers of Commerce
 for Outstanding Effort and Achievement on Behalf of the Hispanic Business
 Community, 1997;
 Named "Outstanding Legislator of the Year" by the National Association of Royalty
 Owners, 1997;
 Named "Distinguished Alumni" by Texas Tech University and Texas Tech Ex-
 Students Association, 1997;
 Named "Legislator of the Year" by the Texas Municipal League, 1995;
 Named one of the "1995 Texas House Crime Fighters Of The Year" by the
 Combined Law Enforcement Association of Texas, 1995;
 "Top Ten Legislators" by Texas Monthly Magazine, 1991, 1995; 1999; "Honorable
 Mention", 1993; "Rookie of the Year", 1989;
 Named one of the "Best Of The Best In The Texas Legislature" by the Dallas
 Morning News, 1995;
 Readers Choice Award for "Favorite Politician," San Angelo Standard-Times, 1992-
 1999;
 Recognized by the Texas Civil Justice League for Outstanding Contributions on
 Behalf of Tort and Civil Justice Reform, 1991, 1992, 1993, 1994 and 1995;
 Named the first "Outstanding Alumnist" by the Texas Tech University of Law, 1995;
 Recognized for "Outstanding Leadership" in the Prevention of Child Abuse and
 Neglect, Children's Trust Fund of Texas Council, 1995;
 Named "Outstanding Legislator of the Year" by the Texas Arts Council, 1995;
 "1994 Citizen of the Year" from the San Angelo Chamber of Commerce, 1995;
 "Distinguished Citizen of the Year" by the Concho Valley Council, Boy Scouts of

Questionnaire For Nominees Before The Committee
 On The Judiciary, United States Senate
 Robert A. Junell

America, 1994;
 "Legislator of the Year" by the Texas Transit Association, 1994;
 "Legislative Leadership Award" from the Texas Game Warden's Association, 1994;
 Named "1993 Legislative Crime Fighter of the Year" by the Greater Dallas Crime Commission, 1994;
 "Friend of Business Award for 1993" from the Texas Chamber of Commerce, 1994;
 "Award of Appreciation" for Ensuring Liberty, Dignity and Respect, NAACP, 1993;
 Recognized by the Texas Rehabilitation Association for Outstanding Efforts on Behalf of Texans with Disabilities and the Rehabilitation Professionals who serve them, 1993;
 Named "Legislator of the Year" by the Vietnam Veterans of America, 1992;
 Named the John A. Traeger "Legislator of the Year" by the Texas Public Employees Association, 1992;
 Award of Appreciation, Board of Trustees of Community MHMR Centers and Texas Council of Community MHMR Centers, 1991;
 "Rising Star" in the Texas Legislature by the Dallas Morning News, 1991;
 "Legislative Leadership Award" by the Texas Chamber of Commerce, 1991;
 "Silver Spur Award" from the Texas Tourism Association for Outstanding Legislative Service, 1991;
 Named "Legislator of the Year" by the Texas Industrial Vocational Association, 1990;
 Certificate of Appreciation from the Texas Municipal League for Outstanding Service in the Texas House of Representatives, 1989;
 "Legislator of the Year" by the Texas Association of Municipal Health Officials, 1990; and
 Named Outstanding Freshman Legislator of the Year by the Texas House of Representatives, 1989.

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Member State Bar of Texas from June 1977 through the present. Member Tom Green County Bar Association from May 1979 through the present.

Questionnaire For Nominees Before The Committee
 On The Judiciary, United States Senate
 Robert A. Junell

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Licensed to practice in all state courts in the State of Texas from June 1977 to the present. Admitted to practice in the U.S. District Court for the Northern District on July 9, 1979, and the Western District of Texas on January 7, 1983.

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Trustee, West Texas Boys Ranch Foundation;
 Board of Directors, First National Bank of Mertzon, Texas;
 Board of Directors, San Angelo Chamber of Commerce, (Ex Officio);
 Member of the Advisory Board for ASU Management;
 Member, Tom Green County Community Justice Council;
 Lifetime Member of NAACP;
 Trustee, Schreiner College;
 Member, Tom Green County Democratic Club;
 Member, U.S. Polo Association;
 Elder, First Presbyterian Church, San Angelo, Texas;
 Past Board of Directors, Tom Green County AgriFood Education Council;
 Past Board Director, Shannon Health System;
 Past Board Director, Shannon SportsCare Advisory Board;
 Past Board Director, La Esperanza Clinic;
 Past Board of Directors, Research and Oversight Council on Workers' Compensation;
 Past Executive Council Member, Concho Valley Council of Governments;
 Past Board Director, Adult Day Care of San Angelo, Inc.;
 Past Member, Junior League Advisory Board;

Questionnaire For Nominees Before The Committee
 On The Judiciary, United States Senate
 Robert A. Junell

Past Board Director, San Angelo Council on Alcohol and Drug Abuse;
 Past Board Director, Texas Tech School of Law Association;
 Past Board Director, Volunteers in Public Schools;
 Past Member, State MHMR Volunteer Services Council;
 Past Member, San Angelo Adopt-A-School Advisory Council;
 Past Member, Professional Rodeo Cowboys Association of America;
 Past Member, Attorney General's Child Welfare Advisory Council;
 Past Board Director, Texas Tech Ex-Student Association;
 Past Board of Directors, Advisory Board of the Southwest Institute for
 Addictive Diseases, Texas Tech University;
 Past Chairman, State Employee Charitable Campaign, San Angelo District
 Past Board of Directors, United Way of the Concho Valley, (Ex Officio);
 Past Board of Directors, San Angelo AIDS Foundation;
 Past Board of Directors, San Angelo Child Support Volunteer Service
 Board; and
 Member of Board of Directors, San Angelo Area Foundation.

With the exception of First Presbyterian Church in which I have been a
 deacon and I am now an elder, I am or have been a board member of all
 the other organizations with the exception of the NAACP, the Professional
 Rodeo Cowboys Association, and the U.S. Polo Association, in which
 case I am or have been only a member.

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or
 other material you have written or edited, including material published on the Internet.
 Please supply four (4) copies of all published material to the Committee, unless the
 Committee has advised you that a copy has been obtained from another source. Also,
 please supply four (4) copies of all speeches delivered by you, in written or videotaped
 form over the past ten years, including the date and place where they were delivered, and
 readily available press reports about the speech.

Attached are two Texas Tech University School of Law Review articles, being
 Texas Tech Law Review, Volume Twenty-Seven, No. 4, 1995-1996, The 1995
 Revisions To The DTPA: Altering The Landscape, pages 1441-1485; and Texas
 Tech Law Review, Volume Twenty-Eight, No. 4, 1996-1997, Consideration of
 Illegal Votes in Legislative Election Contests, pages 1095 – 1160.

Questionnaire For Nominees Before The Committee
 On The Judiciary, United States Senate
 Robert A. Junell

I give a number of speeches each year to various groups in connection with my legislative duties including commencement addresses, speeches to civic clubs, and groups interested in legislative topics. For the most part, none of these speeches are formally prepared. Attached is a list of the speeches I have delivered over the past ten years. Also attached is a copy of some of the speeches that were written and for which I have a copy.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

My health is excellent. My last physical examination was in September, 2002.

16. **Citations:** If you are or have been a judge, provide:

- (1) a short summary and citations for the ten (10) most significant opinions you have written;

Not applicable.

- (2) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

Not applicable.

- (3) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

Questionnaire For Nominees Before The Committee
On The Judiciary, United States Senate
Robert A. Junell

Not applicable.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

Not applicable.

17. **Public Office, Political Activities and Affiliations:**

- (1) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

Elected to Texas House of Representatives in 1988 to represent District 72 in the Texas Legislature and am currently serving my 7th term which will expire in January 2003.

- (2) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have participated in a number of political campaigns on the local, state, and federal level since 1975. I have never held an official title in any campaign, nor have I ever been paid to participate in any campaign.

18. **Legal Career:** Please answer each part separately.

- (1) Describe chronologically your law practice and legal experience after graduation from law school including:

- (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

Not applicable.

- (2) whether you practiced alone, and if so, the addresses and dates;

Not applicable.

- (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Jackson Walker LLP; January 1999 to present; 301 W. Beauregard, Suite 200, San Angelo, Texas 76903; of Counsel;
 Small, Craig and Werkenthin LLC; August 1996 to December 1998; 225 W. Beauregard, San Angelo, Texas; of Counsel;
 Smith, Carter, Rose, Finley and Griffis; August 1994 to August 1996; 222 W. Harris; Partner;
 Griffis, Motl and Junell; October 1990 to August 1994; 16 E. Beauregard, San Angelo, Texas; Associate and Partner;
 Webb, Stokes and Sparks; April 1979 to October 1990; 314 W. Harris, San Angelo, Texas; Associate and partner;
 Scott, Hulse, Marshall and Feuille; April 1977 to April 1979; El Paso, Texas; Associate; and,
 George Gilkerson, Attorney at Law; May 1975 to February 1977; Lubbock, Texas; law clerk;

- (2) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

From 1977 to 1979 I generally was a litigator primarily representing insurance companies. From April 1979 to October 1989, I primarily represented plaintiffs in personal injury cases. From October 1989 to the present date, I have generally represented insurance companies and businesses who have been sued, an occasional plaintiff in a personal injury case, political sub-divisions in litigation and businesses in commercial litigation.

- (1) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My clients range from a hospital, a doctors' clinic, a school district, political sub-divisions, pharmaceutical companies, small businesses, a bank and individuals. Virtually, all my practice is litigation related.

- (3) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

From 1977 to 1988, I have tried numerous cases each year. Since my election to the legislature in 1988, the actual number of cases tried each year has decreased as we are in session for five months every other year and when the governor calls a special session. Additionally, the nature of my practice has changed from handling personal injury cases to more commercial litigation. I recently finished a six week trial in a bank related matter.

- (2) Indicate the percentage of these appearances in

- (1) federal courts;
(2) state courts of record;
(3) other courts.

- (1) federal courts - 10%
(2) state courts - 90%
(3) other courts - not applicable.

- (3) Indicate the percentage of these appearances in:

- (A) civil proceedings;
(2) criminal proceedings.

- (A) 100%
(2) 0%

Questionnaire For Nominees Before The Committee
On The Judiciary, United States Senate
Robert A. Junell

(4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

(4) I have tried approximately 50 cases to a verdict. In most of these cases, I was either the sole or chief counsel.

(5) Indicate the percentage of these trials that were decided by a jury.

(5) 90%

(4) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

(4) None.

(5) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

Both in my role as a state representative and as an attorney, I have assisted many individuals on a pro bono basis. Last year I represented a lady in a workers' compensation case in which the insurance company sued her in Dallas over medical benefits. Even though Dallas is some 250 miles from San Angelo, I filed an answer on her behalf and was prepared to try the case on her behalf when the insurance company dismissed their claim against her. Presently, I am assisting an elderly gentleman who has been defrauded by a car salesman. I am involved in numerous civic activities including the United Way, Meals for the Elderly, the West Texas Boys Ranch, the Boys and Girls Clubs, and my church.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name

of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

- (1) the citations, if the cases were reported, and the docket number and date if unreported;
 - (2) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
 - (3) the party or parties whom you represented; and
 - (4) describe in detail the nature of your participation in the litigation and the final disposition of the case.
- (A) State of Texas v John Melvin Dorough; 1978; 34th District Court of El Paso County, Texas; Judge Jerry Woodard; Co-counsel Richard Munzinger 915-533-2493; Steve Simmons District Attorney of El Paso County;
- (1) I no longer have that information.
 - (2) Capital murder case. The defendant murdered a young man and sexually assaulted a young lady. We pled our client "not guilty" by reason of insanity.
 - (3) Court appointed to represent the defendant.
 - (4) My co-counsel and I provided a full defense for our client who was facing the death penalty. I did investigation in the case, interviewed witnesses including psychiatrists, did briefing, participated in individual voir dire, suppression hearings, examined and cross examined witnesses. The case lasted six weeks including jury selection. The jury found our client "guilty" of capital murder, but gave life imprisonment rather than the death penalty.
- (B) Jinks Taylor v. Morris Brothers Construction Company; 1982; 112th District Court of Sutton County, Texas; Judge Troy Williams; Co-counsel Tom Webb (deceased); Guy Choate, 314 W. Harris San Angelo, Texas, 915-653-6866; Don Griffis, 225 W. Beauregard, San Angelo, Texas, 915-481-2550

- (1) I no longer have that information.
- (2) Personal injury case where the widow sued a construction company over the death of her husband who was killed when dynamite was used improperly.
- (3) I represented the plaintiffs, who were the deceased's wife and child.
- (4) I fully participated in all aspects of the case including pre-trial discovery, briefing, examining and cross-examining witnesses and making final argument. The jury returned a verdict of \$5 million dollars.

(C) Wilson v. Midland American Bank, 2001-2002, 238th District Court of Midland County, Texas; Judge John Hyde; Co-counsel Bob Cohan and Mark Steiner, Jackson Walker L.L.P., 901 Main Street, Suite 6000, Dallas, Texas 75202-3797, 214-953-6000; opposing counsel Rodney Satterwhite representing Estate of William B. Wilson, Stubbeman, McRae, Sealy, Laughlin & Browder, Inc., Suite 800, 550 West Texas Avenue, Midland, Texas 79702; and James B. Wilcox representing Wil-Roye II and Universal Reserves, Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., Suite 700 North Building, 1120 20th Street, N.W., Washington, D.C. 20036.

- (1) J. W. Wilson, et al v. Washington Mutual Bank, FA, Cause No. 42,274.
- (2) Claim against bank for fraud, misrepresentation, negligence and breach of duty of good faith and fair dealing. The President of the bank was alleged to have recommended to a bank customer to do business with another bank customer, who the President was alleged to have known was not a good credit risk.
- (3) I represented the bank.
- (4) I fully participated in all aspects of the case including taking depositions, presenting contested motions to the court, examination and cross-examination of witnesses and briefing legal issues. The case took approximately 6 weeks to try to the court and final arguments were scheduled on May 16, 2002. The Court has

entered a judgment in our client's favor. A Notice of Appeal was filed by the Plaintiffs on December 26, 2002.

- (D) Debbie Ferguson v. Town and Country Food Stores, 1998, United States District Court for the Western District of Texas, Midland Division, Judge Lucius Bunton; Opposing counsel - Cindy Weir, Suite 5, 5050 E. University Blvd., Odessa, Texas 79762, 915-550-0292; and Co-Counsel, Ana Thornton, 6007 Hart Cove, San Antonio, Texas 78249, 210-696-4638.

- (1) Debbie Ferguson vs. Town & Country Food Stores, Inc., Cause No. MO-97-CA-130.
- (2) Claim against convenience store chain for wrongful termination and violations of EEOC by former store manager.
- (3) I represented the defendant convenience store chain.
- (4) I full participated in all aspects of the case including taking all depositions, presenting contested motion to the Court, examination and cross-examination of witnesses, jury selection and final argument. The jury returned a verdict of no liability against the defendant.

- (E) Herman Hoffpauir v. Alsups, Inc., 1989 United States District Court for New Mexico, Roswell Division, Judge John Conway. Co-counsel, Doug Perrin, 1250 E. Copeland Rd., Suite 744, Arlington, Texas 76011, 817-469-6199. Opposing counsel, Stephen Bell, Atwood, Malone Law Firm, 400 N. Pennsylvania, Roswell, New Mexico, 505-622-6221.

- (1) I no longer have that information
- (2) Claim against convenience store chain for personal injuries to customer who was injured when another customer's vehicle jumped the curb and struck him while he was using the payphone in front of the store in Artesia, New Mexico.
- (3) I represented the plaintiff/customer, who was injured.
- (4) Jury returned verdict of \$500,000.00 with the store being found 50% at fault (I believe this was correct finding). I fully participated in all aspects of the case including jury selection, pre-

Questionnaire For Nominees Before The Committee
On The Judiciary, United States Senate
Robert A. Junell

trial discovery, examination and cross-examination of witnesses and final argument.

- (F) Twin Mountain Supply Company v. John David Whipple, Individually and d/b/a Pel USA, et al, 1999-2000, 391st District Court of Tom Green County, Texas; Judge Tom Gossett, Opposing counsel, John E. Sutton, P.O. Box 871, San Angelo, Texas 76902-0871, 915-482-8470; Opposing counsel, Brad Haralson, 331 West Avenue B, San Angelo, Texas 76903, 915-655-4187; Opposing counsel, Ophelia F. Camina, Susman Godfrey, L.L.P., 901 Main Street, Suite 4100, Dallas, Texas 75202-3775, 214-754-1900.

- (1) Twin Mountain Supply Company v. John David Whipple, Individually and d/b/a Pel USA, Erin Vaught, Harlan Fenske, Lee Allison, and Pel Industries, Ltd., Cause No. A-00-0023-C.
- (2) Claim against former employees for breach of non-competition agreement and violation of contract not to disclose trade secrets. Claim against supplier of products for tortious interference with contract and breach of contract. Suit for injunctive relief and damages.
- (3) I represented the business who brought suit against the former employees and product supplier.
- (4) Court issued Temporary Restraining Order and after a contested hearing issued a Temporary Injunction. Prior to trial on the granting of a Permanent Injunction, the parties mediated the case and settled it by the entry of an agreed injunction and payment of damages to the plaintiff. I participated in all aspects of this case including pre-trial discovery including depositions and all arguments in hearings on the TRO and temporary injunction. I also was the representative for the plaintiff at the mediation.

- (G) Southwest Plaza Shopping Center, Inc., et al v. Johnson and Johnson, Inc.

- (1) Southwest Plaza Shopping Center, Inc., Normond Linder and Jo Ann Linder, Individually and as Trustees of the Linder Trust, and Eric Linder and Barbara Linder vs. Johnson & Johnson, Inc., Ethicon Endo-Surgery, Inc., (Individually and as Successors-In-Interest to Ethicon, Inc., Technicare Corporation and Ohio-

Questionnaire For Nominees Before The Committee
On The Judiciary, United States Senate
Robert A. Junell

Nuclear, Inc.), Theodore Steans and Raymond Russell; Cause No. B-97-1510-C.

- (2) Claim against manufacturing company located in San Angelo, Texas, for toxic torts. Allegations included that defendants had disposed of hazardous waste by placing it in the city sewer system without proper treatment.
 - (3) I represented the defendants.
 - (4) I participated in formulation of trial strategy and taking of depositions of both defense witnesses and plaintiffs' witnesses. Prior to trial of case, the case was mediated, and I participated in mediation of case. The case settled at mediation.
- (H) From 1998 through 2001, I was counsel in the western portions of Texas for American Home Products in all cases brought against them for the manufacturing and sale of the drug known as "Phen-Fen." I was listed as counsel for AHP in approximately 130 cases. Only one case was almost tried. It was entitled Esther Justice v. American Home Products, et al. It was part of a group of cases originally filed as Archie Burroughs, et al v. American Home Products, et al. Co-counsel included lawyers from Arnold and Porter (national counsel), Burgain Hayes, 700 Lavaca Street, Austin, Texas, 512-472-8800, and Zollie Steakley, 207 Oak Street, Sweetwater, Texas, 915-235-4944. Opposing counsel included Scott Nabers for the Plaintiff, 440 Louisiana, Suite 1710, Houston, Texas, 713-844-3750; Temple Dickson, 115 E. 3rd Sweetwater, Texas, 915-236-6691; and Don Bowen, deceased, Helm, Pletcher, Bowen & Saunders, 2929 Allen Parkway, Suite 2700, Houston, Texas 77019, 713-522-4550. In all of the Phen-Fen litigation, there were numerous plaintiffs' counsel and defense counsel who represented nominal co-defendants. The Judge in the Esther Justice matter was Judge Weldon Kirk (now retired) of the 32nd District Court of Nolan County, Texas.
- (1) Archie Burrough, Betty Olson, Esther Justice, Frances Westbrook and Julie Yates v. American Home Products Corporation; Wyeth-Ayerst Laboratories Company, a Division of American Home Products Corporation; A.H. Robins Company, Incorporated; Ion Laboratories, Incl; Medeva Pharmaceuticals, Inc.; Gate Pharmaceuticals, a Division of Teva Pharmaceuticals, U.S.A., Inc.; Fisons Corporation; Richwood Pharmaceutical Company, Inc.;

Zenith Goldline Pharmaceuticals, Inc.; Goldline Laboratories, Inc.; Camall Company; Eon Labs Manufacturing, Inc.; Rugby Laboratories, Inc.; Ben Chavez, M.D.; K-Mart; Robert James Davis and Kenneth D. Frich, Jr.; Cause No. 17,996.

- (2) Claim against pharmaceutical manufacturer for sale of unsafe drug.
- (3) I represented the defendant, American Home Products.
- (4) I participated in investigation of claims, taking of depositions, arguing pre-trial motions, including interlocutory appeals of venue and joinder issues, including a mandamus of the trial judge to the Court of Appeals. I was the lead attorney on joinder of all cases in our administrative judicial region for discovery and pre-trial purposes. Prior to the trial of the Esther Justice case, the case settled as did (to my knowledge) all of the Phen-Fen cases in our region.

(I) Roman Catholic Diocese of San Angelo v. Kathleen L. Mayrand, Individually and as Temporary Administrator of the Estate of David Mayrand, 1997-1999, Judge Dick Alcala, 340th District Court of Tom Green County, Texas. Co-counsel was Guy Choate, Webb, Stokes & Sparks, L.L.P., 314 West Harris, San Angelo, Texas 76903, 915-653-6866; Harold Loftin, Small, Craig & Werkenthin, 225 West Beauregard, San Angelo, Texas 76903, 915-481-2550 (no longer with the firm). Opposing counsel, George Finely, 36 West Beauregard, Suite 300, San Angelo, Texas, 915-653-6721; and James Carter, 515 West Harris, San Angelo, Texas 915-655-4889.

- (1) Roman Catholic Diocese of San Angelo v. Kathleen L. Mayrand, Individually and as Temporary Administrator of the Estate of David Mayrand; Cause No. C-97-1429-C.
- (2) Claim by Church against former (deceased) bookkeeper of Diocese who embezzled approximately four million dollars from the Diocese over a period of twenty years.
- (3) I represented the Plaintiff, the Diocese.
- (4) A temporary restraining order was filed by the Diocese and an Agreed Order Granting Temporary Injunction against Defendants

Questionnaire For Nominees Before The Committee
On The Judiciary, United States Senate
Robert A. Junell

was entered on December 5, 1997. I fully participated in all aspects of the case including working closely with the accountants for the Diocese to trace how much money had been diverted and where the money had gone. The case was settled at mediation.

- (J) Richard Middleton v. KAS Construction Company 1989-1992. Judge Mark Whittington, 160th District Court of Dallas County, Texas.

- (1) David Richard Middleton v. KAS Construction Co.
- (2) This was a claim by an employee of a mill work company against a contractor for personal injuries for negligence while the plaintiff was unloading his truck and trailer at the construction site.
- (3) I represented the injured worker/plaintiff.
- (4) I fully participated in all aspects of the case, including all pre-trial discovery, voir dire, direct and cross-examination and final argument. The jury returned a verdict for the plaintiff.

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

None.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

- A. Esther Justice v. American Home Products, Burgain Hayes and Robert Junell; Cause No. 18,137; 32nd District Court of Nolan County, Texas. 1999. Plaintiff in a "Phen-Fen" case against my client, American Home Products, (see

Questionnaire For Nominees Before The Committee
On The Judiciary, United States Senate
Robert A. Junell

#19 (8) above), sued our client, my co-counsel, and myself for breach of contract. The agreement dealt with a Rule 11 agreement to proceed to trial. We refused after consultation with our client because the Eastland Court of Appeals had issued a "Stay" in the case until it made a decision on an interlocutory appeal dealing with venue and joinder of parties (the plaintiff was from Indiana). The case was dismissed when the underlying "Phen-Fen" case was settled. There were no proceedings or discovery in the case.

B. Kerry Gilmore v. Webb, Stokes, Sparks, Parker, Junell, and Choate and Robert Junell. Cause No. CV91-0856-C, in the 340th District Court of Tom Green County, Texas. 1991. Plaintiff was a former client of the firm, who had been represented by other lawyers and a suit filed by them in federal district court prior to our firm being retained. Limitations had already run against the named defendants in the first case prior to our firm being contacted (negligence and strict liability in tort). I decided, after consultation with experts and other lawyers, that we could not make a case and that it would be frivolous for us to continue with the case. Mr. Gilmore signed an agreed motion to dismiss the case, and then two years later, sued us stating that we should have advised him to sue his first lawyers. The trial court granted us a summary judgment, and the case was settled on appeal.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

If appointed, I would automatically recuse myself from hearing any cases involving my current law firm or clients for a period of two years. After that time, I will make it known to litigants in the court by filing with the clerk's office a list of former clients and the name of my current firm and should any party desire for me to be recused because of the fact that my current firm is involved or because a former client of mine is involved, then they may file a "blind" recusal with the clerk, and I will not hear the matter. I have only a 401K with my current firm and a former firm and a partnership with one former firm involving real estate. I will move the 401Ks and divest myself of my interest in the real estate partnership.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I own a small ranch near San Angelo, and I plan to continue to operate it. We raise cattle and plant cotton, wheat, and hay. My wife owns a 25% undivided interest in a farm along with her sisters. She plans to continue to operate it. I also have served as both a deacon and Elder of my church.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

See attached Financial Disclosure Report.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

See attached Financial Statement – Net Worth

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes, there is a selection commission in my jurisdiction.

- (1) If so, did it recommend your nomination?

I believe so.

- (2) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I answered a questionnaire from the Committee. I appeared before the Committee San Antonio, Texas, in April/May 2001. I went to

Questionnaire For Nominees Before The Committee
On The Judiciary, United States Senate
Robert A. Junell

Washington, D.C. in May 2001 to be interviewed by Sen. Gramm and Sen. Hutchinson.

- (3) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		40	000	Notes payable to banks-secured			
U.S. Government securities-add schedule		12	781	Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities-add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		4	000
Due from relatives and friends		5	000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		160	059
Real estate owned-add schedule		540	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		184	000				
Cash value-life insurance							
Other assets itemize:							
Livestock		35	000				
Proceeds from annuities with Metropolitan Life to be received in 2004, 2005, 2006, and 2007 of \$67,250 each year		269	000				

Questionnaire For Nominees Before The Committee
On The Judiciary, United States Senate
Robert A. Junell

Spouse's IRA – Moneyfund		6	045				
Spouse's Individual Account – see schedule		23	749				
CASHFUND UBS – Paine Webber		1	762				
		10	722				
IRA – see schedule							
IRA – see schedule		61	825	Total liabilities		164	059
IRA – see schedule		397	635	Net Worth	1	423	460
Total Assets	1	587	519	Total liabilities and net worth	1	587	519
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)			Yes
On leases or contracts				Are you defendant in any suits or legal actions?			No
Legal Claims				Have you ever taken bankruptcy?			No
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT – NET WORTH**Schedule – U.S. Government Securities****A. Spouse's IRA**

1.	FHLB 0 Series A1 – Strips Rate 0.0% matures 8/25/03 -	\$4,937.00
2.	Cert Accrual TSY 0% 03 due 11/15/03 Secs Ser K Prin Pmt on 11.875 2003 -	\$1,971.00
3.	TENT TRSY Interest Payment Matures 05/15/09	\$2,336.00
4.	Cert Accrual TSY 0% 09 Due 05/15/09 Secs Ser Q Int Pmt on 13.25 2014	\$ 766.00
5.	Chattanooga Valley Corp Secd 1 st Mtg Matures 07/01/10	\$2,765.00

B. Spouse's IRA

1.	UBS PaineWebber Money Fund	\$6,045.75
----	----------------------------	------------

Robert A. Junell
Financial Statement – Net Worth

FINANCIAL STATEMENT – NET WORTH**Spouse's Individual Account:****UBS – PaineWebber**

A.	Mutual Funds	
1.	AIM MID CAP Equity Fund Class A	\$ 5,709.00
2.	AIM Weingarten Fund CL A	\$ 9,400.00
3.	Delaware Select Growth Fund CL A	\$ 2,475.00
B.	UBS PaineWebber Cash Fund	<u>\$ 6,078.00</u>
	Total:	\$23,662.00

Robert A. Junell
Financial Statement – Net Worth

FINANCIAL STATEMENT – NET WORTH**Filer - IRA**

A.	Money Fund	\$ 20.29
B.	Mutual Funds – Brinson S&P 500 Index Fund Class A	\$61,805.00

Robert A. Junell
Financial Statement – Net Worth

FINANCIAL STATEMENT – NET WORTH**Filer - 401K Jackson Walker L.L.P.**

A.	Vanguard Index S&P 500	\$ 3,817.80
B.	Europacific Growth	\$ 8,078.12
C.	Income Fund of Americas	<u>\$ 3,826.70</u>
	Total:	\$10,722.62

Robert A. Junell
Financial Statement – Net Worth

FINANCIAL STATEMENT – NET WORTH**IRA – Webb, Stokes & Sparks, L.L.P.**

A.	Merrill Lynch	\$397,635.03
----	---------------	--------------

Robert A. Junell
Financial Statement – Net Worth

FINANCIAL STATEMENT – NET WORTH**Schedule - Real Estate Owned**

A.	320 Acres, Tom Green County, Texas	\$460,000.00
B.	(Spouse) ¼ undivided interest 640 acres in Collingsworth County, Texas (estimate)	\$ 80,000.00

Robert A. Junell
Financial Statement – Net Worth

FINANCIAL STATEMENT – NET WORTH**Schedule – Real Estate Mortgages – Payable**

(Also, this Schedule is referenced under General Information, first question.)

A.	Mortgage with GMAC Mortgage on house located on 320 acres	\$82,606.66
B.	Mortgage with sellers on 110 acres of pasture land (part of 320 acres) – Rebecca Phy and Rachel Barring	\$77,453.90

Robert A. Junell
Financial Statement – Net Worth

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).
S. James Otero, Samuel James Otero, Jim Otero
2. **Position:** State the position for which you have been nominated.
United States District Judge, Central District of California.
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.
Superior Court of the State of California, Los Angeles County. 111 Hill Street Los Angeles, California, 90012. (213) 974-5707
4. **Birthplace:** State date and place of birth.
Los Angeles, California, December 30, 1951
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.
Married, Jill Otero (maiden name: Sadja), Special Education Teacher, Severally Emotionally Disturbed Children. Los Angeles Unified School District. We have two dependent children.
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.
Stanford Law School J.D. 1976 (1973-1976)
California State University, Northridge, B.A. Political Science, Magna Cum Laude, 1973 (1969-1973)
7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.
Appointed, Judge of the Superior Court of the State of California, Los Angeles County. (9/90 to present) 111 N. Hill Street, Los Angeles, California 90012.

Board member and Former Vice President of Salesian Boys and Girls Club and Salesian Family Youth Center. (1992-present) (Nonprofit centers helping at risk youth and their families in East Los Angeles)

Elected, Board Member and Vice President of the California Judges Association. (1998-2001)

Elected, Vice President (1999-2000) and current Board Secretary California Latino Judges Association.

1/4 Partnership interest in an 8 unit residential apartment, located at 6057 Pleasant Valley Rd., Placerville, California. The units were sold in 1999. The partnership dissolved upon the sale.

Appointed, Judge of the Municipal Court, Los Angeles. (12/88-9/90, elevated to the Superior court in 1990) 650 N. Grand Street, Los Angeles, California 90012.

Office of the City Attorney, City of Los Angeles (Senior Law Clerk 1977, Deputy City Attorney) 1977-1987. 1800 City Hall East, 200 N. Main Street, Los Angeles, California 90012.

Elected Board Member Los Angeles Deputy City Attorney and Assistant City Attorneys Association. Elected Board Member Latino City Attorney Association. 1980-1982 (Nonprofit)

Regional Counsel Southern Pacific Transportation Company & General Counsel and Vice President, Southern Pacific Warehouse Company. (7/87-12/88) 417 S. Hill Street, Los Angeles, California 90013.

Southern California Gas Company. (Summer job 1975) Law Clerk
Now Sempra Energy. 101 Ash Street, San Diego, California.

Chemical Plant in Pacoima, California. (Summer job 1974)
Laborer & Warehouseman (Do not recall address.)

Alcoa Aluminum Company. Alcoa Street, Vernon California. (Summer job 1973)
Laborer & Warehouseman. (Do not recall address.)

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

I did not serve in the military.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

- Appointed Altar Boy, St. Mary's Parish, Los Angeles.
- Elected, class representative, John Muir High School.
- California Scholarship Federation, I graduated high school at age 17.
- Dean's List all eight semesters, California State University at Northridge.
- Political Science Honor Society, California State University at Northridge.
- Magna Cum Laude, B.A. Political Science (1973)
- Recipient, Carl Spaeth Scholarship, Leland Stanford Law School.
- Elected, Student Body Vice President, Stanford Law School (1976).
- Elected, Executive Committee, Los Angeles Superior Court.
- Elected, Vice President, California Judges Association.
- Elected, Vice President, California Latino Judges Association.
- Recipient Certificate of Appreciation Los Angeles County Bar Association.
- Recipient, Certificate of Appreciation, City Attorney's Association of Los Angeles.
- Recipient, Certificate of Appreciation, Glendale Bar Association.
- St. Don Bosco Award for Outstanding Service to the Salesians.
- Commendation, Constitutional Rights Foundation.

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

- Mexican American Bar Association
- California Latino Judges Association
Vice President (1999-2000) current Secretary of the Board
- California Judges Association
Vice President and Executive Board Member (1998-2001)
- Superior Court Judges Association
- Los Angeles County Bar Association
- Federal Energy Bar Association
- Railroad Trial Counsel Association
- Corporate Law Committee, L.A. County Bar Association
- Bench Bar Relations Committee, Los Angeles County Bar

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

California Bar Admission Date: 1977
Central District of California: 1984

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

- Stanford Chicano Law Students Association
- Stanford Chicano Alumni Association
- Stanford Alumni Association
- Burbank & Glendale YMCA
- Social Member, Oakmont Country Club, Glendale, California
- Associate Member Temple Sinai, Glendale, California

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Over the years, I have addressed judges, bar associations and student groups regarding court business and law related issues. I know of only one lecture concerning summary judgments that was video taped. I do not have access to the tape.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

I have not testified before any committee of the Congress.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

I have no medical conditions that I believe would interfere with my duties. Over the years I have experienced periodic congestion and upper respiratory conditions. The cause has never been definitively diagnosed. I have been told it may be the result of double pneumonia I contracted as an infant. The respiratory ailment is annoying, not debilitating. In my last two physicals (2001 & 2002), I was found to be mildly anemic. This year I have undergone diagnostic tests to determine the cause. The results indicate a mild ulcer seemingly caused by daily use of aspirin. (I was taking aspirin as a prophylactic measure because of daily vigorous exercise.) My doctor has scheduled additional tests to confirm. Overall, I feel I am in very good health. I run five to nine miles almost every day. Over the years, I have entered and run about 100 races, including ten marathons. In January 2002, I placed first in the CJAC Race for Justice.

16. **Citations:** If you are or have been a judge, provide:

- (a) a short summary and citations for the ten (10) most significant opinions you have written:

California Superior Court Judges do not write opinions. However, referenced below are 10 significant cases I presided over as trial judge. Also enclosed is a copy of a statement of decision I authored in Citizens for Jobs and the Economy v. County of Orange.

- People vs. Chauncey J. Veasley, Dellano Leroy Cleveland, Rajesh Prasmad Charan. Case No. KA006977. In the referenced double murder capital case, the defendants were charged with two counts of murder, two counts of robbery and conspiracy to commit both. At trial the people alleged that each defendant participated in the execution style murder of victims Quinn Nelson and Charles Hunter after robbing them of drugs. After a six week trial, the jury returned a verdict of guilty as to each defendant and also recommended a sentence of death. At a subsequent sentencing hearing, I sentenced Defendants Veasley and Cleveland to death. However, I rejected the jury's recommendation of death for Defendant Charan and sentenced him to life without the possibility of parole.
- People v. Alfred Martinez Jr., Case No. KA006412. The referenced criminal trial involved one count of P.C. § 664 187 (attempted murder of a police officer.) At trial, the people alleged that Mr. Martinez leaned out the passenger window of a vehicle being pursued by a City of West Covina Police Unit and fired a shotgun at the pursuing officer. Immediately afterwards, Mr. Martinez threw the shotgun and a pair of gloves outside the passenger's window and the driver and Mr. Martinez surrendered. The defendant was convicted after a jury trial. At sentencing, the people alleged that Mr. Martinez was on parole at the time of his arrest and was a member of the Mexican Mafia prison gang.

- People v. Jonas Ferdinand Abad Curato, Case No. KA005514. The referenced criminal litigation involved one count of P.C. § 187 (murder). Evidence offered at trial established that the defendant shot the victim after the defendant and victim quarreled about whether the defendant was being too loud at a party. Testimony showed that the party was being given to celebrate a birthday. The victim, Oliver Dehesa had attempted to persuade Curato to quiet down when he became noisy. The victim also patted defendant on the back of the head, an action the defendant resented. Curato left the party, but warned he would kill the victim's family one by one. When Curato returned, he shot the victim in the back of the head. After a six-day trial, the jury returned a verdict of guilty.
- People v. John Anthony Wourms, Case No. KA002520. The referenced criminal matter involved one count of P.C. § 451(B) (arson of an inhabited structure.) Evidence adduced at trial established that on October 25, 1989, the defendant set fire to his apartment causing two hundred and fifty-thousand dollars in damage to the structure. The people proved at trial that there had been a long ongoing feud between defendant and his landlord. The fire was set in retaliation for a judgment of eviction and back rent that the landlord had just secured in municipal court. The investigation also revealed that Mr. Wourms had taken out a writer's insurance fire policy immediately before the crime. The defendant was convicted and sentenced in absentia after fleeing the jurisdiction of the court following the close of defendant's case.
- People v. Paul Lassen, Case No. K4003510. The referenced criminal matter involved one count of P.C. § 207A kidnap and one count of P.C. § 243 sexual battery and torture with a stun gun. Trial testimony established that the victim had met the defendant in Kansas State Prison where she was employed as a secretary. The victim subsequently sponsored the defendant's parole in a work release program and the two commenced a relationship. The relationship ended 10 months later after they had relocated to California. The victim testified at trial that on the day of the incident the defendant had flagged her over to the curb while she was driving home from work on a route she used every day. He concocted a story that he needed a ride to his house. When they arrived at the location, he forced her upstairs to the apartment they both had once resided in. There she was bound to a chair with duct tape and rope while the defendant tried to convince her to renew their relationship. When she refused, he carried her to the bedroom and gagged her. As punishment, he tortured her with a powerful electric stun gun. The victim suffered several contact burns from the weapon. The incident was ended when police broke into the residence after being alerted by the victim's current boyfriend. The jury convicted the defendant of both counts. However, the Court of Appeals later reversed the kidnap conviction. The court concluded that defendant's movement of the victim from her vehicle to her apartment was insufficient to support the kidnaping charge.
- Citizens For Jobs and the Economy, et al, Petitioners, Plaintiffs and Respondents, and County of Orange, Defendant, Third Party Plaintiff and Respondent v. Jeffrey C. Metzger, Third Party Defendant, Intervenor and Appellant. Orange

County Superior Court Case No. 00CC0 3 205. Court of Appeal No. D037543. The referenced litigation involves various challenges by proponents of a civilian airport at the El Toro Marine Air Station to measure F (the Safe and Healthy Communities Initiative) which, among other issues, required a two-thirds vote of the electorate on the approval of airport, jail and hazardous waste landfill projects. After motions for summary judgment were filed by the proponents and opponents of the measure, the court found Measure F to be void and unenforceable. (See attached Statement of Decision). This litigation was politically charged and the parties polarized. My decision regarding the infirmities of the measure rendering it unenforceable was affirmed by Court of Appeal in a published decision.

- Metro-Goldwyn Mayer v. The Walt Disney Company, Case No. BC149799. The referenced litigation involved a claim for breach of a licensing agreement. Evidence adduced at trial established that MGM licensed to Disney certain rights for use in theme parks around the world. Under the license agreement, Disney was obligated to return the rights for any country in which it had not developed a movie park within nine years. After nine years, Disney had developed only the Florida park. Disney, however, refused to reconvey to MGM its rights in France. MGM brought the litigation for reconveyance of the European rights, damages and to terminate the entire license agreement because of Disney's breach. Prior to the jury trial, I granted summary adjudication in favor of Disney on MGM's declaratory relief action seeking termination of the entire license agreement. The Court concluded that the European rights were severable from the United States rights. After presentation of the evidence, a jury found that Disney had breached the license agreement and MGM was awarded damages in the sum of \$1.5 million.
- Michael Clinton v. Regents of The University of California, Case No. BC218913. The referenced litigation involved a claim of wrongful death arising out of the medical care and treatment provided to decedent Drew Michael by Defendants Richard Reynolds, M.D. and Gary Scott, M.D. at Children's Hospital of Los Angeles. On July 27, 1998, 11-year-old Drew died during a spinal surgery for scoliosis. Plaintiffs contended that the negligence of Defendants caused their son's death. After a two week trial, the jury returned a verdict in favor of defendants.
- MEZ Industries, Inc. v. Pacific National Insurance Company, Case No. BC172220. The referenced litigation involved an action for declaratory relief and breach of contract arising out of the advertising injury provisions of Defendant Pacific National Insurance Policy. The narrow issue presented in the litigation was whether Pacific's policy which provided coverage for "advertising injury" required Pacific to defend plaintiff in an underlying Federal District Court complaint alleging that MEZ had induced others to infringe on four patents. After hearing, the court concluded that the particular policy provisions did not require Pacific to defend the underlying action because there was no potential for coverage and thus the duty to defend was not triggered. The court also

concluded that coverage for inducement for patent infringement would be barred by Insurance Code Section 533. On appeal the opinion authored by Justice Croskey was certified for publication.

- Howard Edleman v. Donald Minkler, M.D. et al, Case No. BC145925. The referenced civil trial involved a claim for medical malpractice for allegedly inappropriate post-surgical care which resulted in a complete loss of Plaintiff's right eye. After a 5 week trial, the jury hung 8-4 in favor of the defendant. Upon retrial, the jury returned a verdict for defendant.
- (b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and
- Cotran v. Rollins Hudig Hall (1998) 17 Cal.4th 93. The issue presented in Cotran was what is the role of the jury in deciding whether misconduct occurred when an employee hired under an implied agreement not to be dismissed except for good cause is fired for misconduct? Does the jury decide whether the acts that led to the decision to terminate happened? Or is its role to decide whether the employer had reasonable grounds for believing they happened and otherwise acted reasonably? At the time of the trial, California Courts of Appeal were divided over the question. The majority of the District Courts of Appeal decisions generally held that the jury's role is to determine whether the employer concluded misconduct occurred "fairly, honestly and in good faith." However the Second District Court of Appeal (Division Seven) decision in Wilkerson v. Wells Fargo Bank (1989) 212 Cal.App.3d 1217 adopted a more expansive view. Wilkerson held that the jury must decide whether the alleged misconduct occurred as a matter of fact, and placed the burden of proving it on the employer. The District Court of Appeal which governs the Los Angeles Superior Court is the Second District Court. I was bound to follow Wilkerson, which at the time was the only published Second District Court of Appeal Decision adopting the broader view. Division One of the Second District heard the Cotran Appeal. Division One disapproved of Division Seven's Decision in Wilkerson and reversed. The California Supreme Court granted plaintiff/respondent's petition because of the conflict between the Courts of Appeal. The Supreme Court adopted a governing standard requiring only that the employer establish that in discharging the employee it acted "fairly, honestly and in good faith." The Supreme Court also disapproved the Wilkerson decision.
 - Hyland v. Hughes Aircraft Company LASC No. BC179742 2nd Civil No. B144946. The lawsuit filed in 1997 concerns the entitlement of Virginia Hyland, heir to the estate of Pat Hyland, to be paid under a Letter Agreement dated April 27, 1983, wherein Hughes promised key employees that if Hughes should be sold and if it should implement a program pursuant to which senior executive management was given the right to receive "units of equity" upon sale then Pat Hyland could receive sums under the agreement. Hughes was in fact sold in 1985 and a equity program was instituted for the benefit of senior

executive management. At trial the court granted defendants' motion to sever for early resolution of the issue of whether Hyland's claims were barred by the statute of limitations. After presentation of evidence, I granted judgment in favor of defendants finding that Hyland's claims expired no later than 1989. The Court of Appeal reversed. A Petition for review is pending before the California Supreme Court. Given that the matter is still pending under Rules of Judicial Conduct, I cannot comment further.

- *Henkle Corporation v. Lloyd's of London*, B134742, 88 Cal.App.4th 876 (2001) Not citable superseded by Grant of Review to California Supreme Court. The referenced litigation involves the issue of whether rights to liability insurance coverage may be taken away from a corporate policy holder when it undergoes a corporate reorganization. On motion for summary adjudication I followed California law on this issue as enunciated in *General Accident Ins. Co.* Cal.App.4th 1444, 1451 and ruled that Rights to insurance are contractual and follow ordinary rules of contractual assignment (including with respect to the policyholder's corporate successor); unlike tort liability, they cannot be altered by "operation of law". I ruled that the mere fact that one company becomes successor to tort liability of another company does not mean that it is put into a contractual relationship with the company's insurers. Rather, unless the new corporate entity was the successor to the corporate policyholder under the corporation law, or unless a corporate policyholder intended to transfer insurance policies to a new corporate entity (and did so with the consent of the insurer), the insurance rights remain with the corporate policy holder. On appeal, the Court of Appeal rejected *General Accident Ins.*, reversing the trial court and holding that insurance rights may be transferred by operation of law. The California Supreme Court has granted Respondents Petition for Review. The matter is still pending and under the Rules of Judicial Conduct, I am not allowed to comment further.
- *PMC, Inc., et al., v. Neil Kadish* (2000) 78 Cal.App.4th 1368. In this case the majority shareholders of a corporation brought an action for misappropriation of trade secrets against former managers of the corporation who had formed a new, competing corporation. While the action was pending, individuals who had no affiliation with the corporation invested in and became officers and directors of the new corporation and plaintiffs joined them as defendants, seeking to hold them personally liable. This group of defendants brought a motion for summary judgment, asserting that they could not be held liable because the evidence established that they did not know nor did they have reason to know about the alleged misappropriation of trade secrets. I granted summary judgment in their favor. The Court of Appeal reversed. The court held that I erred in granting summary judgment, since a triable issue of material fact existed as to the defendants active participation or approval of the tortious conduct. The Appellate Court's standard of review involving a summary judgment is de novo. No finding of abuse of discretion is required. Upon remand the matter was tried before a jury. The jury found in favor of defendants, concluding that plaintiff failed to prove tortious conduct on the part of any defendant.

- Michaelis v. Schori (1993) 20 Cal.App.4th 133. In this litigation, the Court of Appeal reversed my order denying defendant/physicians' motion to compel arbitration of a minor's claim in a medical malpractice case. According to plaintiff, she consulted defendant Dr. Schori for medical care related to her pregnancy. During her first visit, plaintiff, 17-years-old at the time and living with her parents, signed a binding arbitration agreement, also signed by Dr. Schori. When plaintiff went into labor she checked into the hospital. Dr. Schori told plaintiff that her delivery would be handled by Dr. Bader. According to plaintiff, Dr. Bader never showed up, and the hospital failed to detect complications. Ultimately, the baby was stillborn. Disaffirming the arbitration agreement, the plaintiff sued the doctors and the hospital for malpractice. I denied defendant's petition, finding that the California Code of Civil Procedure section 1295 specifically allows disaffirmance of a contract for medical services which contains a provision for arbitration of any dispute involving medical negligence by a minor, if the minor's parent or guardian has not signed the medical contract. The Court of Appeal held that California Civil Code section 34.5, which deals with the type of treatment for which a minor might be reluctant to seek parental approval (pregnancy care), precludes an unemancipated minor from disaffirming a section 1295 arbitration provision entered into as part of a contract for pregnancy treatment. Prior to Michaelis there was no case law analyzing the two statutes.
 - KNB Enterprises v. Matthews (2000) 78 Cal.App.4th 362. In this litigation, the owner of the copyright to erotic photographs of noncelebrity models, brought an action alleging, by right of assignment, the models misappropriation claims under California Civil Code section 3344, against an individual who was alleged to have commercially displayed the photographs on his Internet Web site without authorization. I granted defendant's motion for summary judgment, finding that plaintiff's claim was the equivalent of a copyright infringement claim and barred by the Court of Appeal's decision in Fleet v. CBS (1996) 50 Cal.App.4th 1911. In Fleet the appellate court held that unpaid film actors' claims for misappropriation of name, photograph, or likeness under section 3344 of the Civil Code were preempted by federal copyright law, where the only misappropriation alleged was the film's authorized distribution by the exclusive distributor, CBS. In KNB the Court of Appeal criticized Fleet's "broad language" regarding preemption of the actors' section 3344 claims and limited the language to the facts of that case. The court went on to conclude that a section 3344 claim is preempted under Fleet only where an actor or model with no copyright interest in the work seeks to prevent the exclusive copyright holder from displaying the copyrighted work.
- (c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.
- Citizens For Jobs and the Economy, et al, Petitioners, Plaintiffs and Respondents, and County of Orange, Defendant, Third Party Plaintiff and Respondent v.

Jeffrey C. Metzger, Third Party Defendant, Intervenor and Appellant. Orange County Superior Court Case No. 00CC03 205. Court of Appeal No. D037543. The referenced litigation involves various challenges by proponents of a civilian airport at the El Toro Marine Air Station to measure F (the Safe and Healthy Communities Initiative) which, among other issues, required a two-thirds vote of the electorate on the approval of airport, jail and hazardous waste landfill projects. After motions for summary judgment were filed by the proponents and opponents of the measure, the court found Measure F to be void and unenforceable. (See attached Statement of Decision). This litigation was politically charged and the parties polarized. My decision regarding the infirmities of the measure rendering it unenforceable was affirmed by Court of Appeal in a published decision.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

See Hyland v. Hughes LASC No. BC 179742 and 2nd Civil No. B144946 attached.

17. **Public Office, Political Activities and Affiliations:**

- (a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

None.

- (b) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

18. **Legal Career:** Please answer each part separately.

- (a) Describe chronologically your law practice and legal experience after graduation from law school including:

See chronology below.

- (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;
- (2) whether you practiced alone, and if so, the addresses and dates;

- (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.
- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.
- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.
- a. July 1977 to June 1980:
Criminal Branch Trial Deputy for the office of the City Attorney, Los Angeles. My primary duty was the prosecution of a steady stream and variety of misdemeanor jury and court trials, including drug, theft, violent crimes and driving under the influence of alcohol cases. Additional assignments included staffing master calendar and arraignment courts, evaluation of cases for filing, and law and motion practice.
- b. June 1980 to June 1982:
I was assistant supervisor for the Los Angeles City Attorney's Criminal Division, Central Trials Branch. My duties included: organizing and directing the daily operations of central trials, including the supervision of approximately 35 trial deputies and support staff; assigning high visibility, complex and sensitive cases for advanced preparation; evaluating the performance of all personnel assigned to central trials; responding to inquiries from judges and commissioners assigned to the downtown Municipal Courts; advising enforcement agencies concerning prosecution of criminal matters and preparing budgetary recommendations concerning personnel, equipment and facilities.
- c. June 1982 to June 1984:
Litigation position in the Liability Section of the Department of Water and Power for the City of Los Angeles where I handled a caseload of approximately 84 Superior Court cases and 66 Municipal Court cases in the personal injury and property damage fields. In addition, I conducted all law and motion, arbitration and appellate proceedings in connection with such litigation, and I instituted actions and cross actions against others who were determined to be liable to the Department of Water and Power.
- d. June 1984 to July 1987:
I represented the Department of Water and Power of the City of Los Angeles in both state and federal court involving all aspects of public utility and electric rate litigation. Additionally, I represented the City of Los Angeles, the Public Service Department of the City of

Glendale, the Water and Power Department of the City of Pasadena and the Public Service Department of the City of Burbank before the Federal Energy Regulatory Commission and the Federal Bonneville Power Administration concerning bulk-electric rate issues.

e. July 1987 to December 1988:

General Attorney and Regional Counsel in charge of the Southern California Office of the Southern Pacific Transportation Company Law Department. My responsibilities included: legal counsel to the Superintendent of Railroad Operations and Southern Pacific Police; oversight of all community, government and Native American relations (Morongo Indian Tribe); real estate transactions; California Public Utility Commission hearings; and FEHA litigations. In addition, I served as Vice President and General Counsel for Los Angeles Union Terminal Inc. and the Southern Pacific Warehouse Company.

f. December 1988 to Present:

Since 1988, I have served on both the Los Angeles Superior and Municipal Courts, being appointed by Governor George Deukmejian to the municipal court in November 1988 at age 36 and elevated September 1990. In the 14 years I have been on the bench, I have presided in 3 of our districts serving also as Supervising Judge of North Central District from 1994 through 1996. In January 2002, I was appointed Assistant Supervising Judge, Civil Division. Over the years, I have handled class action, insurance coverage, commercial civil and complex criminal litigation including a three-defendant special circumstance case.

- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

I appeared in court frequently when I was with the Los Angeles City Attorney's Office. Occasionally, when I represented the Department of Water and Power and Southern Pacific Railroad.

- (2) Indicate the percentage of these appearances in

- (A) federal courts; 10%
- (B) state courts of record; 60%
- (C) other courts. 30%

- (3) Indicate the percentage of these appearances in:

- (A) civil proceedings; 70%
- (B) criminal proceedings. 30%

- (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

In approximately 30 cases, I was sole or chief counsel.

- (5) Indicate the percentage of these trials that were decided by a jury.

80%

- (c) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have never appeared before the United States Supreme Court.

- (e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

Since 1992, I have worked with the disadvantaged through the Salesian Boys and Girls Club and the Salesian Family Youth Center. We currently operate two centers in the Boyle Heights area of East Los Angeles. The Salesians act as the lead agency in gang, crime and violence reduction in the area. We provide academic, social and recreational services. Our mission is to involve both children and their parents to strengthen the vitally important family unit. We serve all boys and girls on a non-discriminatory basis. Over the years, I have been involved in other pro bono work including St. Mary's Church and LAMP. Finally in 1976, I worked on a project for the Mexican Legal Defense and Education Fund (MALDEF) involving the right of Texas public school officials to require proof of citizenship as a condition for enrollment in public school. The lawyer supervising the project was Joaquin Avila. The projects co-contributor was Raul Martinez.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

See list of cases provided below.

- (a) the citations, if the cases were reported, and the docket number and date if unreported;

- (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
- (c) the party or parties whom you represented; and
- (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1. People v. Huff. I could not locate the case number. The trial judge was Florence Bernstein, now deceased. Opposing counsel was Art Bell, who I believe is also deceased.

The referenced litigation is significant because it was my very first trial and opposing counsel was noted Attorney Art Bell, author of Search and Seizure Compendium — Bell's Compendium.

After the litigation, Mr. Bell sent a letter to then City Attorney Burt Pines referencing the litigation. Mr. Bell's letter best describes the litigation and is reprinted here below.

Mr. Otero is one of your Deputies in the Criminal Division. He's presently assigned to the Van Nuys Office where he gave me a good beating in a 594 case the other day. That's not so unusual. You have a number of good trial Deputies who can do, and have done, that.

What's unusual is the way Mr. Otero did it. In the first place, he saved the case from being dismissed, by talking the judge into trailing it when nine times out of ten a judge would have thrown it out and chewed out the City Attorney's office for not subpoenaing a key witness. This happened in the trial court after the People had answered ready in the Master Calendar Division. Mr. Otero was able to nurse the case along until three in the afternoon and then until nine the next morning, and then until ten-thirty that day, too. It made me mad as hell, I can tell you. At that stage I really believed my client was innocent.

Ok, we start a court trial and by noon I'm ready to rest my case, and I have it won, in my opinion. Up speaks Mr. Otero and asks to be able to present rebuttal evidence in the afternoon because he'd just heard of a tie-breaking witness. The judge say OK, and I'm even madder.

When we come back in the afternoon, Mr. Otero doesn't have the witness he said he would have because the guy is the new owner of the "Victim" bar and can't leave it. What Mr. Otero does come in with is another live witness that neither the police, the City Attorney's Office nor I had discovered before. I'll be damned if Mr. Otero hadn't taken his lunch hour, driven to Woodland Hills, interviewed the bar owner, examined the scene of the crime, found this "phantom" witness, and by God driven him back to Van Nuys for the trial!

After that witness testified and was cross examined by me the best I could, the judge took the case under submission for five days. I don't know if the judge really had some doubt, but I didn't. I knew it was going to be bad news for my client. It was. He was convicted, fined and put on summary probation. Somehow justice had been done, and it was all due to the efforts of Mr. Otero.

Now, maybe that's being more eager than a public servant should be. I mean, it wouldn't work in the U.S. Postal Service. The system wouldn't tolerate that kind of diligence and extra effort. Maybe Mr. Otero hasn't learned that yet. I hope he never does. He made no big deal out of it. He's quiet, unassuming and has an excellent courtroom manner. Anyway, he impressed the hell out of me, and I thought you ought to know about it.

2. Southern California Edison Company v. Department of Water and Power of the City of Los Angeles, et al. Case No. C 301654.

The above-captioned litigation involved an action for injunctive relief, Breach of Contract, Specific Performance, and Declaratory Relief, arising out of a contract whereby plaintiff, Southern California Edison Company (SCE), nominal defendants, San Diego Gas and Electric Company and Pacific Gas and Electric Company and defendant the Los Angeles Department of Water and Power apportioned rights and obligations to sell energy to the California Department of Water Resources (DWR) to transport water from northern to southern California (Feather River Project.)

The contract was entered into in 1966 and provided for the sale of energy to the DWR at 3 mills per Kwh, terminating in 1983. At the time the parties entered into the agreement (1966), all assumed the cost of supplying energy would be less than the contract rate during the term of the Agreement.

Due to market manipulation exerted by the Organization of Petroleum Exporting Countries (OPEC), the Arab oil embargo of 1973 and the Iranian Revolution, LADWP's cost rose in 1979 to approximately 50 mills per Kwh. As result of the 16(+) fold increase, LADWP notified the parties that the Department would not supply at the 3 mill rate. LADWP's justification was unforeseen events resulting in economic impracticability.

Subsequent to the Department's notification, SCE secured an injunction requiring the Department's performance pursuant to the Agreement. Issues presented in the case were whether SCE wrongfully obtained the injunction, whether the privately owned

utilities wrongfully conspired against LADWP to obtain the injunction and whether LADWP was entitled to be excused from performance due to changed circumstances rendering LADWP's participation in the contract impracticable.

I was appointed in 1983 to be lead counsel for LADWP. The Department's economic damages were in excess of \$60(+) million. The case involved OPEC experts as well as the history of California electric utilities industry from the 1950s through the 1980s. Settlement was finally reached in 1987, entitling the City to rights in the Palo Verde nuclear power facility and transmission access over SCE's lines. Chief Counsel for LADWP was Edward Farrell. Current address: 2424 Via Pacheco, Palos Verdes Estates 90274. Telephone (310) 377-5112. The case settled prior to trial. Counsel for Southern California Edison was James Montague. Current Address: Office of the Public Defender, 250 E. Main Street, Fl. 6, El Cajon, CA 92020 (619) 441-4397. Counsel for San Diego Gas and Electric was the Honorable Tim Tower. Current Address: San Diego Superior Court, 220 W. Broadway DID 17 Fl. 2, San Diego, CA 92101-3409 (619) 531-3011.

3. Lainer Investments, etc., et al. v. Department of Water and Power of the City of Los Angeles (1985) 170 Cal.App.3d 1:214 Cal.Rptr. 812

The above-captioned appellate matter involved an action for property damage and loss of profits arising from a fire occurring June 21, 1977. Appellants, the Los Angeles Department of Water and Power and the City of Los Angeles were sued by the landlord and tenants of the building which burned down. Respondents claimed breach of contract for failure to provide an adequate supply of water to respondents' fire sprinkler service, negligent creation of a dangerous condition and negligent installation of a dangerous condition.

In the first part of the bifurcated trial, the trial court determined there existed a "contract between the parties under which the City was obligated to provide an adequate supply of water to the fire sprinkler system in respondents' building by means of a special pipe and valve which the City had installed for that purpose at respondents' request."

At the conclusion of the liability phase, the jury rendered a special verdict for respondents based on theories of breach of contract, negligence and maintenance of a dangerous condition. After hearing testimony concerning damages, the jury awarded over \$2 million in damages to respondents.

On July 15, 1985, in a unanimous opinion, the Court of Appeal, Second Appellate District, Division 3 filed an opinion reversing

judgment. The Court concurred with appellants; holding that the Department was immune from tort liability under Government Code section 850.2 and 850.4 because the fire service valve constituted fire protection equipment within the meaning of those sections. Further, the court held that “appellants had not entered into an express contract for the purpose of providing fire protection to respondents’ property and that liability for fire damage based on an insufficient supply of water could not be implied from the ordinary relationship between appellants and respondents, i.e., distribution of water for public use to consumers at a rate fixed by ordinance.”

I represented DWP on the appeal. Co-counsel representing DWP was Diana Mahmud. Metropolitan Water District, 700 N. Alameda St., P.O. Box 54153, Los Angeles, CA 90054 (213) 217-6985, supervising attorney was Terso Rosales, Office of City Attorney, 111 N. Hope Street, P.O. Box 51111, Los Angeles, CA 90051 (213) 367-4645. The case was argued before Justice Danielson, Acting P.J., Justice Arabian and Judge Fidler. Justice Arabian wrote the opinion which was certified for publication. Respondents’ Petition for Hearing was denied. Counsel for respondents was Irving L. Halpern of Halpern and Halpern.

4. Linda A. Hess, et al., v. Los Angeles Department of Water and Power, 2 Civil No. 63263

The above-captioned appellate matter involved a wrongful death action arising out of a drowning in the Los Angeles Aqueduct. The Aqueduct, which supplies water from the Owens River to the County and City of Los Angeles is operated and controlled by the Department of Water and Power (LADWP). Respondent, LADWP, was sued by appellants who alleged maintenance of a dangerous condition and failure to post signs warning of the swift moving water within the Aqueduct.

At trial, respondent moved to exclude and the Court excluded certain evidence proffered by appellants on the grounds that its potential prejudice and time consuming nature outweighed its probative value. (Evid. Code § 352.)

The excluded evidence included prior incidents of injury and drownings, subsequent remedial changes, a report by the Department compiled before the Hess incident which discussed prior drownings and various proposals regarding additional safety precautions. Also excluded were witnesses who would have testified about other drownings in the channel and photographs of safety devices used in other canals.

On December 20, 1983, the Court of Appeal, Second Appellate

District, Division 2 filed its opinion affirming judgment in favor of LADWP. The court concurred with respondent holding that appellants failed to establish that the trial court abused its discretion.

I represented DWP on the appeal and argued the case before Justice Roth, P.J., Justice Gates and Justice Compton. Justice Compton wrote the opinion. Counsel for Appellants was Stephen L. Odgers, Esq., of Buxbaum & Chakmak, 414 Yale Avenue, #B, Claremont, CA 91711-4356, (909) 625-5978.

5. Fine's Food Company v. Department of Water and Power. Case No. Unknown.

The above-captioned litigation involved an action for property damage, food spoilage and loss of profits arising from an explosion and fire occurring at a distributing station owned by the Department of Water and Power. As a result of the explosion, plaintiff and several other Department customers suffered a power outage lasting 12 hours.

The Department was sued by plaintiff, the owner of a market, who alleged breach of contract for failure to provide service, negligent maintenance of equipment and negligence in failing to timely restore service. In addition, counsel for plaintiff argued that the Department did not provide the same quality of service in East Los Angeles as was provided in more prosperous areas of the City.

Evidence offered at trial by the Department, established that the cause of the explosion was the failure of a thyrite resistor contained within a voltage regulator. The regulator was purchased by the Department a short time prior to the fire and was inspected prior to placement in service.

In response to plaintiff's contention regarding disparity of service, the Department provided evidence establishing that the Department responded within minutes of the explosion. Department personnel worked diligently to restore service and any delay was caused by danger of "flash over" at the site of the explosion. The case was tried before a jury in 1983. The jury returned a verdict in favor of LADWP. The trial court judge was Judge Hindin, now deceased. Attorney for plaintiff was David W. Cornwell. Address: 3017 Windmill Road, Torrance, CA 90505-7140.

6. U.S. Department of Energy Bonneville Power Administration Docket No. EF 84-2011-006

The above-captioned litigation involved a rate hearing before the

Federal Energy Regulatory Commission, regarding the Federal Bonneville Power Administration's nonfirm 1983 energy rates.

Pursuant to section 7(k) of the Northwest Electric Power Planning and Conservation Act, California Utilities are afforded special review by the Energy Commission as a protection against political pressures from Pacific Northwest utilities. BPA's involvement in the Washington Public Power Supply System (WPPSS) has in recent years increased pressure on BPA to recover these losses from California utilities.

The Department of Water and Power actively participated in the 7(k) hearing in order to protect Los Angeles rate payers from excessive rates proposed by BPA. In the 83 proceeding, I argued on behalf of LADWP that BPA's rates were unduly discriminatory, that Congress enacted 7(k) to prohibit undue price discrimination and that there were no differences in service that justify the difference in rates charged by BPA.

The trial in the referenced matter began on September 11, 1985, and was completed on September 30, 1985, encompassing eleven days of hearings. In the proceeding, I was nominated by counsel for the other California utilities to be lead attorney in the cross-examination of BPA's main witness. The judge who heard the case was Judge Leventhal. Counsel for BPA were James Fama and Susan Akerman. Counsel representing Southern California Edison and Pacific Gas and Electric Company was John D. McGrane, formerly of Reid and Priest, current telephone number (202) 467-7621. Address: 1800 M Street, Washington D.C. 20036.

7. In the matter of the 1985 Bonneville Power Administration Wholesale Power rate and transmission rate and adjustments. BPA WP-85 and TR-85.

The above-captioned litigation matter involved a rate hearing before the Bonneville Power Administration (BPA), regarding BPA's nonfirm 1985 energy rates.

Pursuant to section 7(i) of the Northwest Power Act, BPA is required to sponsor rate hearings prior to adjustments in energy rates. In the 1985 hearings, BPA continued its trend in reallocating costs incurred in the operation of its system from customers in the Pacific Northwest to California utilities.

LADWP actively participated in the 7(i) hearing. The Department challenged BPA's proposed 1985 rates on the grounds that they violated recognized rate making principles and statutory constraints

governing BPA's rate structure.

Trial in the matter began on January 4, 1985, and was completed February 6, 1985, encompassing 20 days of hearings. In the proceeding on behalf of the Department, I sponsored expert testimony and cross-examined BPA witnesses regarding the proposed nonfirm rates. The judge assigned to the matter was Judge Sweeney. Counsel for BPA was James Fama. Counsel representing Southern California Edison Company was John D. McGrane formerly of Reid and Priest, current address: 1800 M St. N.W., Washington, DC 20036 (202) 467-7621.

8. State of California v. Stansbury, Case No. unknown.

The above-captioned criminal proceeding involved one count for violating Penal Code section 242 (battery), arising out of a domestic dispute.

The case is representative of the many minor but important domestic violence matters prosecuted by the City Attorney's Office. It is significant because it brought to my attention the injustice that befalls us all when a court fails to treat domestic violence matters with the seriousness and impartiality accorded other prosecutions.

In this matter, Mr. Stansbury was cited for striking his former live-in girlfriend in a dispute involving the return of her son's furniture. The case was called to trial only after the defendant refused a plea to Penal Code section 415 (disturbing the peace).

During cross-examination of the victim, defense counsel, over counsel's objection, was permitted to inquire if Mr. Stansbury had kicked the victim out of his house because she was seeing another man. When the victim replied that the allegation was not true, defense counsel, again over objection, produced a cassette tape and informed the court and jury that he had evidence that the victim had just perjured herself. The court then called both counsel to the bench and informed the victim that if counsel's representation was correct the court would recommend the perjury allegation be referred to the District Attorney's Office for prosecution.

After hearing the tape, the court concluded that the allegation was not true but refused my request to admonish the jury regarding counsel's representation. After careful deliberation, the jury found Mr. Stansbury guilty of assault. The court, however, imposed only a \$50.00 fine with probation to terminate upon payment of the fine. The boy's furniture was not ordered returned.

The victim, her son and our system suffered that day. Justice was not served. The trial judge was Judge Tso, now deceased.

9. State of California v. Southern Pacific Transportation Company, et al., Case No. 87201390.

The above-captioned criminal proceeding involved a grade blocking incident occurring August 19, 1987. The District Attorney alleged that a Southern Pacific conductor refused the request of a police officer and fire captain to move a train for passage of an emergency vehicle. This incident resulted in the filing of numerous charges against Southern Pacific and employees for violations of PUC section 2110, General Order 135 (blocking intersections). The case was of particular significance because it is the first time individuals were charged with violating the PUC Order. Defendants demurred to the complaint on jurisdictional and constitutional grounds.

On January 25, 1988, the court sustained defendants' demurrer without leave to amend. The court held that the application of the order to employees violated the Due Process Clause of the United States and California constitutions in that the employees did not have notice of the law under which they were charged. The District Attorney appealed. The Appellate Department of the Superior Court upheld the sustaining of the demurrer. The case was also noteworthy because of its political overtones. United Neighborhoods Organization (UNO), representatives of various cities, and the United Transportation Union were involved in the litigation.

I represented Southern Pacific and Mr. Roy McRae. The District Attorney assigned to prosecute Mr. James Grodin, Office of District Attorney, 18000 Criminal Courts Building, 210 W. Temple St., Fl. 18, Los Angeles, CA (310) 419-5182. The trial judge was the Honorable Louis Anderson-Smaltz, Dept. M., 117 W. Torrance Blvd., Pier Plaza Upper Level, Redondo Beach, CA 90277 (310) 798-6893.

10. Aetna Life & Casualty Company, et al., v. City of Los Angeles, Case No. WEC 60661.

The above-captioned litigation involved a retrial regarding attorney fees allowing reversal of a \$2.2 million attorney's fee award in the matter of Aetna Life and Casualty v. City of Los Angeles (1985) 170 Cal.App.3d 865.

The fee trial encompassed several days of testimony, and involved six expert witnesses. Richard Pearl, the CEB author regarding attorneys fees, Richard Laskin, an eminent domain specialist and Howard Sheppard, an eminent forensic accountant, testified on behalf of

LADWP. The case was tried before the Honorable Lester E. Olsen (Ret.), 540 Continental Ct., Pasadena, CA 91103-3511 (626) 844-3411. Counsel for plaintiffs was Richard Wolf of Parkinson, Wolf, Lazar and Leo. Current Address: Lewis D'Amato, 221 N. Figueroa St., Suite 1200, Los Angeles, CA 90012 (213) 250-1000. Chief Counsel for DWP was Edward Farrell. Telephone number: (310) 377-5112.

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

I have never been convicted of a crime.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

In 1989/90 I was sued in my capacity as a judge by a pro per plaintiff who filed a RICO complaint. I recall few of the details apart from the fact that the plaintiff sued me because he was displeased with a ruling I had made. The complaint was summarily dismissed on the ground of judicial immunity. In 1987 I filed a personal injury complaint after sustaining property damage and injury following a motor vehicle traffic accident. The matter was resolved immediately after the complaint was filed. No court appearances were required. Finally in 1982 my wife and I filed a small claims action to recover tuition wrongfully by a day care center my son had attended. A default judgment was entered in our favor when we established that the school had been suspended as a corporation for failure to pay state franchise taxes.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I would comply with Code of Judicial Conduct.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

See attached financial disclosure report for nominees.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for. See attached Financial Statement Net Worth.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes.

- (a) If so, did it recommend your nomination?

Yes.

- (b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I submitted my application in July 2001.

I was unanimously approved by California's bi-partisan selection committee. Thereafter, I interviewed with Mr. Gerald Parsky and Mr. Erik George. On April 26, I was interviewed by the White House. After undergoing an FBI background check, I was nominated by President Bush on July 13, 2002.

- (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

FINANCIAL STATEMENT
NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	\$10,000			Notes payable to banks-secured	\$65,000		
U.S. Government securities-add schedule				Notes payable to banks-unsecured	\$0		
Listed securities-add schedule	\$70,000			Notes payable to relatives	\$0		
Unlisted securities-add schedule				Notes payable to others	\$0		
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax	\$0		
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	\$430,000		
Real estate owned-add schedule	\$700,000			Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	\$75,000			1.Tuition University (annually)	\$40,000		
Cash value-life insurance				2.Tuition High School (annually)	\$14,000		
Other assets itemize: 401K Retirement funds.				3.Credit card debt.	\$10,000		
\$300,000 pre tax amount				4.Car Payments. (annual)	\$4,800		
				5.Property taxes & Ins. (annual)	\$11,000		
				6.Car Ins.	\$5,000		
				Total liabilities	\$569,800		
				Net Worth	\$585,200		
				and declining as loans for college increase.			
Total Assets	\$1,155,000			Total liabilities and net worth			
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	None			Are any assets pledged? (Add schedule)	No		
On leases or contracts	None			Are you defendant in any suits or legal actions?	No		
Legal Claims	None			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax	None						
Other special debt	None						

SCHEDULES

- I. Listed Securities - \$70,000
Washington Mutual Investment Fund
Income Fund of America
California Franklin - tax free
- II. Real Estate Owned
Personal residence only \$700,000
- III. Real Estate Mortgages - Payable
My mortgage of \$430,000 is with Chase Manhattan Bank. I also
have a line of credit with Chase secured by our personal residence.